At IAS Part 99 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 7th day of March 2025.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: PART 99

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JEFFREY FARKAS, M.D., LLC,

Plaintiff,

-against-

UNITED HEALTHCARE INSURANCE COMPANY,

Defendant.

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DECISION and ORDER

Index No.: 523667/2023
Mot. Seq. No.: 2
Date of Motion: 3/5/2025
Cal. No. 29

After oral argument, the following papers were read on this motion pursuant to CPLR 2219(a):

Papers	NYSCEF DOC. #
Defendant's preanswer motion to dismiss, etc.	45-67
Plaintiff's Answering Affirmation//Exhibit	68-76
Defendant's Reply	78
Other	

MONTELIONE, RICHARD J., J.

Plaintiff, a medical provider, filed an amended complaint on November 8, 2023, alleging that it provided services to a patient whereby defendant promised to pay for such services in full through an "in-network gap exception." Plaintiff claims this exception means that the insurer agrees to cover out-of-network medical treatment in a manner that does not expose its member to cost-sharing greater than if the member underwent the treatment with an in-network provider. Plaintiff alleges that defendant was obligated to reimburse plaintiff at its billed charges or at an agreed upon rate, and although plaintiff was paid $28,379.36,[1] it is owned a balance of $74,695.64. Plaintiff challenges defendants' reimbursement as inconsistent with the patient's insurance plan and inconsistent with the terms of the gap exception that defendant granted. Plaintiff alleges promissory estoppel, alleging a clear and definite promise to plaintiff that plaintiff's medical treatment of the patient would be covered pursuant to an in-network exception and that defendant failed to make payments pursuant to the patient's member's plan under 29 U.S.C. § 1132(a), which plaintiff indicates entitles it to recover benefits due to the patient based on the assignment of benefits obtained by plaintiff from the patient. Plaintiff further claims

[1] The court notes that the plaintiff alleges it was paid $28,379.36 (¶ 15 of the amended complaint), but then alleges it was paid $35,732.20 (¶ 21 of the amended complaint).

tortious interference with contract and unjust enrichment concerning plaintiff and its patient.

Defendant moves by pre-answer motion to dismiss the amended complaint pursuant to CPLR 3211(a)(1) and (7) arguing that the causes of action for promissory estoppel and tortious interference with a contract are expressly preempted by the Employee Retirement Income Security Act of 1974 (as amended), 29 U.S.C. §1001, et seq. ("ERISA"). Defendant argues that the amended complaint otherwise fails to state a claim upon which relief can be granted and/or refuted by documentary evidence pursuant to CPLR 3211(a)(1).

Legal Analysis

The standard to apply when determining a pre-answer motion to dismiss is found in *Feldman v Nassau Life Ins. Co.*, 2024 NY Slip Op 00890, 2024 WL 697011, at 1 [2d Dept Feb. 21, 2024]:

> 'On a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), the court must accept all facts as alleged in the pleading to be true, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory' (*MJK Bldg. Corp. v. Fayland Realty, Inc.*, 181 A.D.3d 860, 861, 122 N.Y.S.3d 67 [internal quotation marks omitted]). Where, as here, 'evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), and the motion is not converted into one for summary judgment, the question becomes whether the plaintiff has a cause of action, not whether the plaintiff has stated one and, unless it has been shown that a material fact as claimed by the plaintiff to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, dismissal shall not eventuate' (*Gruber v. Donaldsons, Inc.*, 201 A.D.3d 887, 888, 162 N.Y.S.3d 393 [internal quotation marks omitted]).

See also Held v Kaufman, 238 AD2d 546, 547-48, 657 NYS2d 82, 83, 1997 WL 208773 [2d Dept 1997], *affd as mod*, 91 NY2d 425, 694 NE2d 430, 671 NYS2d 429, 1998 NY Slip Op 03246, 1998 WL 159477 [1998]:

> Normally, where the defendants have made a pre-answer motion to dismiss a complaint pursuant to CPLR 3211, an opposing affidavit from the plaintiff will be considered only for the limited purpose of remedying defects in the complaint. However, where, as here, the plaintiff's submissions 'conclusively establish that he has no cause of action', the complaint should be dismissed (*Rovello v. Orofino Realty Co.*, 40 N.Y.2d 633, 636, 389 N.Y.S.2d 314, 357 N.E.2d 970; *SRW Assocs. v. Bellport Beach Prop. Owners*, 129 A.D.2d 328, 517 N.Y.S.2d 741).

Plaintiff claims that it was misled by the defendant into believing that it would receive full reimbursement for the cost of the medical procedure provided by the plaintiff. The amended complaint alleges, "prior to patient's treatment, plaintiff requested, and was granted, an in network/gap exception under authorization number 110161363." (Am. Complaint, ¶ 10). "…(P)ursuant to the in-network exception that defendants granted, defendants were obligated to reimburse plaintiff at its billed charges or alternatively at an agreed upon rate." (Am. Complaint, ¶ 13). "Defendants' explanation of benefits ("EOB") indicated that the unpaid portion of Plaintiff's charges in the amount of $74,695.64 was neither defendants' nor patient's responsibility even though plaintiff never agreed to any such arrangement." (Am. Complaint, ¶ 16). "Under the terms of the gap exception, defendants had an obligation to process plaintiff's claim in a manner that would expose Patient to no greater cost-sharing than if the treatment was performed by a network provider." (Am. Complaint, ¶ 19).

There is no definition of network/gap exception whereby defendant must pay the full cost of the procedure. There is no indication of how and by what means defendant objectively conveyed to plaintiff its' obligation to pay the full amount. The allegation that "defendants made a clear and definite promise to plaintiff that plaintiff's medical treatment of patient would be covered pursuant to an in-network exception," is a legal conclusion without any facts specifying exactly how that "clear and definite promise" was made and the court does not read this requirement into the explanation of benefits. The "In-Network Precertification Exception Disclaimer" (NYSCEF #66) does not support plaintiff's proposition. In fact, it specifically indicates that payment is not a guarantee and is determined after consideration of a number of factors, i.e. "Upon receipt of the claim, we will assess whether the service codes listed above are eligible for payment…(p)ayment is based on the following: Member enrollment and eligibility Terms, conditions, exclusions and limitations of the Member's health benefits plan Oxford administrative and payment policies (For more information on all of our payment policies, please visit our web site at www.oxfordhealth.com.)."

The heart of the plaintiff's causes of action involves whether the payments he received were less than payments mandated under the terms of the employee welfare benefit plan between patient and employer with benefits provided by defendant. As such, the claims made by plaintiff are preempted by ERISA. *See Pilot Life Ins. Co. v Dedeaux*, 481 US 41, 41, 107 S Ct 1549, 1550, 95 L Ed 2d 39, 55 USLW 4471, 8 Employee Benefits Cas 1409 [1987]:

> (a) The common law causes of action asserted in respondent's complaint, each based on alleged improper processing of a benefit claim under an employee benefit plan, "relate to" an employee benefit plan and therefore fall under ERISA's pre-emption clause. Cf. *Metropolitan Life Ins. Co. v. Massachusetts,* 471 U.S. 724, 739, 105 S.Ct. 2380, 2389, 85 L.Ed.2d 728; *Shaw v. Delta Air Lines, Inc.,* 463 U.S. 85, 96–100, 103 S.Ct. 2890, 2899–3001, 77 L.Ed.2d 490 (1983). The pre-emption clause is not limited to state laws specifically designed to affect employee benefit plans. Pp. 1552–1553.

The defendant argues that this is not a case involving "complete preemption" and

therefore the cases cited by plaintiff do not apply. Defendant argues that "defendants have only moved to dismiss the case based on express preemption pursuant to section ERISA §514(a), which requires only that a defendant demonstrate that the state law claims at issue "relate to" the administration of an ERISA Plan." (NYSCEF #78, pp. 2-3). (*Chau v Hartford Life Ins. Co.*, 167 F Supp 3d 564, 2016 WL 844831 [SDNY 2016]). Whether viewed as preempted by ERISA requiring dismissal of the amended complaint, or viewed as state claims unrelated to the plan, the causes of action for promissory estoppel, tortious interference with contract, and unjust enrichment, must be dismissed. The court finds the pleading insufficient to allege a cause of action for promissory estoppel because there is no "clear and unambiguous promise" alleged. (*See Del Vecchio v Gangi*, 225 AD3d 666, 671, 207 NYS3d 540, 546, 2024 NY Slip Op 01292, 2024 WL 1081078 [2d Dept 2024], " 'The elements of a cause of action based upon promissory estoppel are a clear and unambiguous promise, reasonable and foreseeable reliance by the party to whom the promise is made, and an injury sustained in reliance on that promise' (*Bent v. St. John's Univ., N.Y.,* 189 A.D.3d 973, 975, 138 N.Y.S.3d 199 [internal quotation marks omitted]).)" There are also no facts alleged as to how defendant interfered with the contract between the patient and the plaintiff. Plaintiff pleads unjust enrichment as an alternate theory, but because there are no allegations specifying the promises made which enriched defendant at plaintiff's expense, the allegations are insufficient to state a cause of action for unjust enrichment.

Based on the foregoing, it is

ORDERED that the defendant's motion to dismiss the amended complaint is GRANTED and the amended complaint is DISMISSED; and it is further

ORDERED that any other request for relief is DENIED.

This constitutes the decision and order of the Court.

Hon. Richard J. Montelione

KINGS COUNTY CLERK
FILED
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