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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHILDREN'S HOSPITAL AND RESEARCH CENTER AT OAKLAND,)	No. 07-6069 SC
)	
Plaintiff,)	ORDER DENYING
)	DEFENDANT'S MOTION
v.)	FOR PARTIAL SUMMARY
)	<u>JUDGMENT</u>
HEALTH PLAN OF NEVADA, INC.; and)	
DOES 1 THROUGH 25, INCLUSIVE,)	
)	
Defendants.)	
)	
_____)	

I. INTRODUCTION

The Children's Hospital and Research Center at Oakland ("the Hospital") brought this suit in the Alameda County Superior Court in October 2007, alleging that Defendant Health Plan of Nevada ("HPN") failed to pay the contractually required sum for medical services provided to one of HPN's members. See Notice of Removal, Docket No. 1, Ex. A ("Compl."). The Hospital is a California corporation and HPN is a Nevada corporation. HPN invoked the Court's diversity jurisdiction and removed the action from the Superior Court on November 5, 2007. See Notice of Removal. HPN then filed its Answer on December 5, 2007. See Docket No. 3. With leave of the Court, see Docket No. 34, HPN filed an Amended Answer and Counterclaim ("Counterclaim"), asserting that it overpaid for medical services the Hospital provided to two of

United States District Court
For the Northern District of California

1 HPN's members and that it is entitled to recover the excess
2 payments. Docket No. 35.

3 Before the Court is HPN's Motion for Partial Summary Judgment
4 ("Motion"). Docket No. 47. In its Motion, HPN seeks judgment on
5 both claims in the Hospital's Complaint, as well as judgment on
6 the issue of liability in the Counterclaim. See id. The Hospital
7 filed an Opposition to the Motion and HPN filed a Reply. Docket
8 Nos. 56, 61. Having considered the parties' arguments in full,
9 the Court hereby DENIES HPN's Motion.

10
11 **II. BACKGROUND**

12 Beginning in May 2006, the Hospital rendered medical care to
13 a patient ("Patient A") who was enrolled in HPN's Medicaid Managed
14 Care Program. See Schoener Decl. ¶ 6.¹ Pursuant to a Letter of
15 Agreement between the parties, HPN was to pay the Hospital as
16 follows:

17 For Medically Necessary Covered Services
18 rendered by PROVIDER in association with the
19 above reference number, COMPANY shall
20 reimburse PROVIDER one-hundred percent (100%)
of the California Medi-Cal Contracted Maximum
Allowable Reimbursement rate less applicable
copayments, coinsurance, and/or deductibles.

21 Id. Ex. A ("LoA 1"). At about the same time, the Hospital
22 provided care to another HPN member ("Patient B"), under nearly
23 identical terms in a second Letter of Agreement:

24 For Medically Necessary Covered Services
25 rendered by PROVIDER, COMPANY shall reimburse

26 _____
27 ¹ Shaun Schoener, Manager of Network Development and Contracts
28 at HPN, submitted a declaration in support of the Motion. Motion
Ex. 1.

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PROVIDER one-hundred percent (100%) of the California Medi-Cal Contracted Maximum Allowable Reimbursement rate less applicable copayments, coinsurance, and/or deductibles.

Id. ¶ 7, Ex. B ("LoA 2").

The Hospital billed HPN approximately \$2,008,550.40 for services provided to Patient A between her admission and her death on September 1, 2006. Spaeth Decl. ¶¶ 2, 3.² The Hospital refused to provide HPN with the California Medi-Cal Contracted Maximum Allowable Reimbursement applicable to the services rendered to Patient A. Id. ¶ 4. In October 2006, HPN paid the Hospital \$341,325.00 of the billed amount, based on a per diem rate of \$2,775.00 for the 123 days Patient A was admitted to the Hospital. Id. ¶¶ 5, 6.

The Hospital billed HPN \$101,832.53 for services provided to Patient B between May 17 and May 22, 2006. Id. ¶¶ 7, 8. As with Patient A, the Hospital has refused to provide HPN with the applicable California Medi-Cal Contracted Maximum Allowable Rate for the services rendered to Patient B. Id. ¶ 9. In July 2006, HPN paid the Hospital \$37,510.09 of the amount billed for services provided to Patient B. Id. ¶ 10. HPN paid based on the rate set forth in the State of California Department of Health Services Quarterly Hospital Interim Rate Report, 45% of the total amount billed. See id. ¶ 11, Ex. A at HPN022.

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² Corrine Spaeth, the Director of Claims at HPN, submitted a declaration in support of the Motion. Motion Ex. 2.

1 **III. LEGAL STANDARD**

2 Entry of summary judgment is proper "if the pleadings, the
3 discovery and disclosure materials on file, and any affidavits
4 show that there is no genuine issue as to any material fact and
5 that the movant is entitled to judgment as a matter of law." Fed.
6 R. Civ. P. 56(c). "Summary judgment should be granted where the
7 evidence is such that it would require a directed verdict for the
8 moving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250
9 (1986). Thus, "Rule 56(c) mandates the entry of summary judgment
10 . . . against a party who fails to make a showing sufficient to
11 establish the existence of an element essential to that party's
12 case, and on which that party will bear the burden of proof at
13 trial." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In
14 addition, entry of summary judgment in a party's favor is
15 appropriate when there are no material issues of fact as to the
16 essential elements of the party's claim. Anderson, 477 U.S. at
17 247-49.

18
19 **IV. DISCUSSION**

20 The question before the Court in the instant Motion is a
21 narrow one. The Hospital asserts that the provision in the two
22 letter agreements which requires HPN to pay "one-hundred percent
23 (100%) of the California Medi-Cal Contracted Maximum Allowable
24 Reimbursement rate" means that HPN was to pay the Hospital 45% of
25 the amount billed, also known as the "interim rate." HPN contends
26 that disputed phrase refers to a pre-set per diem amount that is
27 much lower than the interim rate and is not tied to the amount

1 billed. At this stage, the Court must only decide if HPN's
2 interpretation of the contract is correct as a matter of law.

3 The first step is a determination of whether the contract is
4 ambiguous. HPN argues that the contract language is not ambiguous
5 on its face, and that the Court's inquiry should end there,
6 because parol evidence is only admissible if a contract is
7 ambiguous. See e.g., Consol. World Invs., Inc. v. Lido Preferred,
8 Ltd., 11 Cal. Rptr. 2d 524, 526-27 (1992) ("One exception to the
9 parol evidence rule is that extrinsic evidence may be introduced
10 to explain the meaning of ambiguous contractual language."). The
11 Court agrees with HPN to an extent. The phrase in dispute is
12 "one-hundred percent (100%) of the California Medi-Cal Contracted
13 Maximum Allowable Reimbursement rate." Considering the ordinary
14 meaning of the words in this phrase, it appears that there is an
15 established maximum rate for Medi-Cal contracts in the State of
16 California, and that the parties agreed HPN would pay the Hospital
17 this rate for services provided to Patient A and Patient B. See
18 Cal. Civ. Code 1644 ("The words of a contract are to be understood
19 in their ordinary and popular sense"); LoA 1; LoA 2.³

20 However, under California law, parties may introduce evidence
21 to prove a latent ambiguity in the terms of a contract. "The test
22 of admissibility of extrinsic evidence to explain the meaning of a

23
24 ³ HPN moves for summary judgment on the issue of liability, to
25 be followed by an evidentiary hearing on the issue of damages. At
26 most, however, the Court could adopt HPN's interpretation of the
27 agreement. As neither party submitted evidence about what the
28 California Medi-Cal Contracted Maximum rate is, it would still be
impossible to determine the correct amount due under either LoA,
and therefore impossible to determine which party, if either, is
entitled to recover.

1 written instrument is not whether it appears to the court to be
2 plain and unambiguous on its face, but whether the offered
3 evidence is relevant to prove a meaning to which the language of
4 the instrument is reasonably susceptible." Pac. Gas & Elec. Co.
5 v. G.W. Thomas Drayage & Rigging Co., 442 P.2d 641, 644 (Cal.
6 1968). The Hospital seeks to introduce a variety of evidence
7 supporting its contention that the disputed phrase refers to the
8 interim rate. Before considering the evidence, the Court must
9 evaluate whether the Hospital's proposed interpretation is
10 reasonable. As noted above, the interim rate for the Hospital is
11 45% of the billed charges. See Spaeth Decl. Ex. A at HPN0022.
12 The Court concludes that the disputed phrase could reasonably
13 refer to the interim rate. Nothing in the language of the
14 contract gives any indication what the "California Medi-Cal
15 Contracted Maximum Allowable Reimbursement rate" actually is.
16 Moreover, without referring to extrinsic evidence itself, HPN is
17 unable to provide a reason why the disputed phrase could not
18 plausibly refer to the interim rate.

19 Given that the contract language is reasonably susceptible to
20 the interpretation the Hospital advances, the Court concludes that
21 the contracts are ambiguous. The Court therefore looks to parol
22 evidence. The Hospital relies on two forms of evidence. First,
23 when HPN paid for the services rendered to Patient A and Patient
24 B, it paid different rates, despite LoA 1 and LoA 2 having the
25 same payment provision. See Lovich Decl. Ex. 1 (Spaeth Deposition
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1 Excerpts) at 13:16-14:13, 16:13-17:21.⁴ Thus, HPN's own conduct
2 suggests that its proposed interpretation may not be correct,
3 particularly given that HPN actually paid the interim rate for one
4 of the two contracts, supporting the interpretation advanced by
5 the Hospital. See id. at 16:13-17:21. According to HPN, it paid
6 the differing rates because the Hospital refused to provide the
7 contracted maximum rate information. See Reply at 6-7, Ex. 1
8 (Spaeth Deposition Excerpts) at 17:10-21, 18:8-15. HPN does not
9 deny that it paid different rates on the two contracts, but the
10 testimony it offers to explain the difference is not sufficient to
11 determine that its proposed interpretation of the contract
12 language is correct as a matter of law. This factual issue is
13 sufficient basis for the Court to deny summary judgment.

14 The Hospital also directs the Court's attention to a fax it
15 sent to HPN regarding billing rates. According to that fax, the
16 interim rate is the "basis that [the Hospital] utilize[s] for
17 payment expectations with out-of-state Medicaid plans and out-of-
18 state Medicated managed care plans." Lovich Decl. Ex. 2. HPN
19 argues that the Hospital's expectations are not material, and that
20 the faxed document refers to the rates paid in the absence of a
21 contract, which should not be applicable under LoA 1 or LoA 2.
22 This is a further factual dispute, making summary judgment
23 inappropriate.

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26 ⁴ Richard A. Lovich, counsel for the Hospital, filed a
27 declaration in support of the Hospital's Opposition. Docket No.
28 57.

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V. **CONCLUSION**

The Court has identified a number of material issues of fact that remain in dispute. The appropriate course is to proceed with trial to resolve these issues. The Court therefore DENIES HPN's Motion for Partial Summary Judgment.⁵

The April 6, 2009, trial date is hereby VACATED. The trial is reset for Monday, April 20, 2009, at 9:30 a.m. in Courtroom 1.

IT IS SO ORDERED.

March 23, 2009


UNITED STATES DISTRICT JUDGE

⁵ The Court has neither accepted nor rejected HPN's interpretation of the contract language. Magistrate Judge Chen previously issued an order requiring the Hospital to respond to certain of HPN's discovery requests unless the Court rejected HPN's interpretation. See Docket No. 67 at 2. If the Hospital has not yet responded to the interrogatories in question, it must do so.