Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **9th day of December, 2022** are as follows:

BY McCallum, J.:

2022-C-00100
c/w
2022-C-00113

GEORGE RAYMOND WILLIAMS, M.D., ORTHOPAEDIC SURGERY, A PROFESSIONAL MEDICAL LLC, ET AL. VS. BESTCOMP, INC., ET AL. (Parish of St. Landry)

Retired Judge Jimmie Peters assigned Justice ad hoc, sitting for Genovese, J., recused.

REVERSED; VACATED; AND CASE DISMISSED. SEE OPINION.

Hughes, J., concurs in part and dissents in part and assigns reasons.
Griffin, J., concurs in part and dissents in part for the reasons assigned by Hughes, J.

SUPREME COURT OF LOUISIANA

No. 2022-C-00100 C/W No. 2022-C-00113

GEORGE RAYMOND WILLIAMS, M.D., ORTHOPAEDIC SURGERY, A PROFESSIONAL MEDICAL LLC, ET AL.

VS.

BESTCOMP, INC., ET AL.

On Writ of Certiorari to the Court of Appeal, Third Circuit, Parish of St. Landry

McCALLUM, J.[*]

This consolidated matter arises from a class action for damages filed by Louisiana health care providers for alleged violations of the Preferred Provider Organizations ("PPO") statute. La. R.S. 40:2201, *et seq*. We granted writs[1] to interpret the statute and to determine whether defendant, Stratacare, Inc. ("Stratacare"), is a "group purchaser" subject to penalties for violating the mandatory notice provision of the statute. After a review of the record and the law, we conclude that Stratacare is not a group purchaser as contemplated by the statute. Therefore, we reverse the court of appeal, vacate the lower court judgments, and dismiss the case.

BACKGROUND

In 1984, the Louisiana Legislature enacted Chapter 12 of Title 40 of the Louisiana Revised Statutes of 1950 to establish the PPO statute. *See* 1984 La. Acts, No. 374. The statute was passed in an attempt to reduce and contain health care costs without jeopardizing: (1) the quality of patient care and (2) the ability of health care providers to maintain, update, and expand their facilities to serve their patients

[*] Retired Judge Jimmie Peters is appointed Ad Hoc Judge sitting for Justice James T. Genovese who is recused in this consolidated matter.

[1] *Williams v. Bestcomp, Inc*., 2022-0100, 2022-0113 (La. 4/26/22), 336 So. 3d 888.

and communities, and to meet federal and state standards and regulations. La. R.S. 40:2201 A(1) and (2). The legislature authorized the formation of PPOs as an "incentive for purchasers and providers to strive for more cost-efficient and effective methods for providing quality patient care and more efficient payment for services rendered." La. R.S. 40:2201 B.[2] The legislature also recognized that the state and governmental bodies can reduce the cost of providing health care benefits for their employees by contracting with a PPO. La. R.S. 40:2201 D.

Louisiana Revised Statute 40:2202(5)(a) defines a PPO as:

> a contractual agreement or agreements between a provider or providers and a group purchaser or purchasers to provide for alternative rates of payment specified in advance for a defined period of time in which:
>
> (i) The provider agrees to accept these alternative rates of payment offered by group purchasers to their members whenever a member chooses to use its services.
>
> (ii) There is a tangible benefit to the provider in offering such alternative rates of payment to the group purchaser.

By the late 1990's, with the advent of computerized automated bill review, "silent" PPOs flourished, causing significant problems for providers.[3] To address the lack of transparency posed by silent PPOs, the legislature amended the PPO statute in 1999 to enact La. R.S. 40:2203.1, effective for all PPOs on January 1, 2001. *See* 1999 La. Acts, No. 1274. Louisiana Revised Statute 40:2203.1 provides:

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[2] As used in this statute, "purchaser" is a reference to "Group purchaser," generally defined as "an organization or entity which contracts with providers for the purpose of establishing a preferred provider organization." La. R.S. 40:2202 (3).

[3] The parties, in briefs and at oral argument, explained the distinction between "silent" and "non-silent" PPOs, as understood within the healthcare industry. A "silent" PPO is one in which multiple group purchasers buy (purchase) and sell the contracted discounted rates to others ("middlemen"), by including these discounted rates in automated bill review software. The provider is unaware that he, she, or it is "in-network" with the ultimate payor of their services. Without proper notice, the provider cannot determine what contract reimbursement rate applies to a particular bill or whether the bill is paid correctly. A "non-silent" PPO, on the other hand, is one in which group purchasers do not peddle the PPO discounts to others but instead utilize the discounted rates themselves. A non-silent PPO is transparent as the provider is aware that he, she, or it is an in-network provider and the contracted rate is known at the time service is rendered.

Prohibition of certain practices by preferred provider organizations

A. Except as otherwise provided in this Subsection, the requirements of this Section shall apply to all preferred provider organization agreements that are applicable to medical services rendered in this state and to group purchasers as defined in this Part. The provisions of this Section shall not apply to a group purchaser when providing health benefits through its own network or direct provider agreements or to such agreements of a group purchaser.

B. A preferred provider organization's alternative rates of payment shall not be enforceable or binding upon any provider unless such organization is clearly identified on the benefit card issued by the group purchaser or other entity accessing a group purchaser's contractual agreement or agreements and presented to the participating provider when medical care is provided. When more than one preferred provider organization is shown on the benefit card of a group purchaser or other entity, the applicable contractual agreement that shall be binding on a provider shall be determined as follows:

(1) The first preferred provider organization domiciled in this state, listed on the benefit card, beginning on the front of the card, reading from left to right, line by line, from top to bottom, that is applicable to a provider on the date medical care is rendered, shall establish the contractual agreement for payment that shall apply.

(2) If there is no preferred provider organization domiciled in this state listed on the benefit card, the first preferred provider organization domiciled outside this state listed on the benefit card, following the same process outlined in Paragraph (1) of this Subsection shall establish the contractual agreement for payment that shall apply.

(3) The side of the benefit card that prominently identifies the name of the insurer, or plan sponsor and beneficiary shall be deemed to be the front of the card.

(4) When no preferred provider organization is listed, the plan sponsor or insurer identified by the card shall be deemed to be the group purchaser for purposes of this Section.

(5) When no benefit card is issued or utilized by a group purchaser or other entity, written notification shall be required of any entity accessing an existing group purchaser's contractual agreement or agreements at least thirty days prior to accessing services through a participating provider under such agreement or agreements.

C. A preferred provider organization agreement shall not be applied or used on a retroactive basis unless all providers of medical services that are affected by the application of alternative rates of payment receive written notification from the entity that seeks such an arrangement and agree in writing to be reimbursed at the alternative rates of payment.

> D. In no instance shall any provider be bound by the terms of a preferred provider organization agreement that is in violation of this Part.
>
> E. Any claim submitted by a provider for services provided to a person identified by the provider and a group purchaser as eligible for alternative rates of payment in a preferred provider agreement shall be subject to the standards for claims submission and timely payment according to the provisions of Subpart B of Part II of Chapter 6 of Title 22 of the Louisiana Revised Statutes of 1950.
>
> F. A group purchaser establishing a preferred provider organization shall be prohibited from charging a credentialing fee or any other type of monetary fee, when no access to a group purchaser is provided. Any provider who participates in a preferred provider organization may be charged a reasonable fee either on a periodic basis or based on the tangible benefits received from continued participation in a preferred provider organization. Such fees may be based on actual utilization of alternative rates of payment by group purchasers or other authorized entities or other reasonable basis other than membership.
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> G. Failure to comply with the provisions of Subsection A, B, C, D, or F of this Section shall subject a group purchaser to damages payable to the provider of double the fair market value of the medical services provided, but in no event less than the greater of fifty dollars per day of noncompliance or two thousand dollars, together with attorney fees to be determined by the court. A provider may institute this action in any court of competent jurisdiction.

The amended statute requires all group purchasers to provide notice to providers (through a benefit card or other written notice) informing the providers that they are parties to the provider's PPO network agreement. Non-silent PPOs are exempt from the notice requirement under La. R.S. 40:2203.1 A ("The provisions of this Section shall not apply to a group purchaser when providing health benefits through its own network or direct provider agreements. . . ."). The amended statute allows providers to institute an action to collect statutory damages and attorney fees from a group purchaser who fails to comply with the notice provisions. *See* La. R.S. 40:2203.1 G.

BestComp, Inc. established a PPO network ("BestComp PPO"), pursuant to the PPO statute. This network allows payors (including self-insureds, third party administrators, and insurers) to access the network and pay discounted rates for medical services performed by health care providers who contract with BestComp.

Plaintiffs, a certified class of health care providers[4], filed a petition for damages alleging that BestComp, as a "group purchaser," failed to comply with the mandatory notice requirements of La. R.S. 40:2203.1 B because it failed to provide a benefit card at the time service was rendered or timely written notice. Plaintiffs sought damages pursuant to La. R.S. 40:2203.1 G, which provides that failure to follow the notice requirements "shall subject a *group purchaser* to damages payable to the provider of double the fair market value of the medical services provided, but in no event less than the greater of fifty dollars per day of noncompliance or two thousand dollars, together with attorney fees to be determined by the court." (Emphasis added).

Plaintiffs amended their petition to add defendant Stratacare, a technology company who licenses medical billing software and provides bill review services, as an additional "group purchaser." Plaintiffs alleged Stratacare entered into PPO agreements for PPO discounts on its own behalf and on behalf of its clients. Subsequently, Plaintiffs amended their petition again to add defendants Chartis Specialty Insurance Company ("Chartis") and Landmark American Insurance Company ("Landmark"), Stratacare's excess liability insurers.[5]

Chartis and Landmark filed motions for summary judgment, arguing Stratacare is not a "group purchaser" under La. R.S. 40:2202(3) and, thus, is not liable for damages.[6] Plaintiffs also filed a motion for summary judgment, claiming Stratacare is a "group purchaser" that applied PPO discounts to Plaintiffs' medical bills by virtue of its contract with BestComp, and a third-party defendant, Rehab

[4] Specifically, the class was certified as: "All medical providers who have provided services to workers' compensation patients as contemplated in R.S. 23:1201, *et seq.*, and whose bills have been discounted after January 1, 2000, pursuant to a preferred provider organization agreement, as defined in La. R.S. 40:2202, by and through BestComp and Stratacare."

[5] Plaintiffs ultimately settled and dismissed their claims against Stratacare. Chartis and Landmark are the remaining defendants.

[6] Chartis and Landmark additionally asserted policy defenses and filed exceptions of prescription and no right of action. Discussion of these exceptions are pretermitted as moot.

Review[7]. Further, they contended the claims against Stratacare are within the scope of their excess liability insurance policies and liability exceeded the $5,000,000 policy limits.

The trial court found Stratacare to be a "group purchaser" and, thus, liable for damages for failing to provide mandatory notice pursuant to the statute. It further found that Plaintiffs proved sufficient violations, with each violation supporting a damage award of $2,000 pursuant to Subsection G. The trial court relied upon an affidavit from Plaintiffs' certified public accountant, Mr. Robert A. Ehlers, who averred that he reviewed Stratacare's corporate records and identified a total of 11,126 PPO discounts taken by Rehab Review. The number of discounts multiplied by 200 equaled $22,252,000.00, which exceeded the available $5 million coverage of each excess insurance policy. Therefore, the trial court granted Plaintiffs' motion for summary judgment and awarded $5,000,000.00 against both Chartis and Landmark. The court of appeal affirmed, specifically finding Stratacare served as "an intermediary" within the meaning of the statute. *Williams v. Bestcomp, Inc.*, 20-106 (La. App. 3 Cir. 12/15/21), 333 So. 3d 461. On the applications of Chartis and Landmark, we granted writs and held oral argument to review the court of appeal's judgment.

DISCUSSION

"'The starting point for the interpretation of any statute is the language of the statute itself.'" *Auricchio v. Harrison,* 2020-1167, p. 4 (La. 12/10/21), 332 So. 3d 660, 662 (quoting *Dejoie v. Medley*, 2008-2223, p. 6 (La. 5/5/09), 9 So. 3d 826, 829). When a statute is clear and unambiguous and its application does not lead to absurd consequences, the provision must be applied as written, with no further

[7] Rehab Review was a Stratacare client that performed bill review services of health care providers who rendered health care to workers' compensation patients and who applied PPO discounts to the bills pursuant to their contract with BestComp.

interpretation made in search of the legislature's intent. *Id.*; La. Civ. Code art. 9; La. R.S. 1:4.

The statutory definition of "group purchaser" is set forth in La. R.S. 40:2202(3):

> "Group purchaser" shall mean an organization or entity which contracts with providers for the purpose of establishing a preferred provider organization. "Group purchaser" may include:
>
> (a) Entities which contract for the benefit of their insured, employees, or members such as insurers, self-insured organizations, Taft-Hartley trusts, or employers who establish or participate in self-funded trusts or programs.
>
> (b) Entities which serve as brokers for the formation of such contracts, including health care financiers, third party administrators, providers, or other intermediaries.

The statute's use of "shall" evidences a requirement that an organization or entity *must* contract with the provider to be a "group purchaser." La. R.S. 1:3. ("The word 'shall' is mandatory."). A "provider" is defined in La. R.S. 40:2202(6) as "an entity which offers health care services." There is no dispute that Plaintiffs qualify as "providers." It is also undisputed that Stratacare did not have a contract with Plaintiffs.

Additionally, under the PPO statute, the contract must be "for the purpose of establishing a preferred provider organization," which is statutorily defined as a "contractual agreement or agreements between a provider and a group purchaser or purchasers to provide for alternative rates of payment specified in advance for a defined period of time." La. R.S. 40:2202(5)(a). Plaintiffs' argument that Stratacare is an additional "group purchaser" is premised on two grounds: (1) the statutory scheme contemplates more than one group purchaser and (2) the permissive part of the definition of "group purchaser" as set forth in subsection (b) includes "other intermediaries."

Both observations are true; nevertheless, they ignore the additional statutory requirement that the contract or contracts be entered into for the purpose of *establishing* a PPO. La. R.S. 40:2202(3)(a). Even "intermediaries" qualify as "group purchasers" only if they are "entities which serve as brokers for the *formation* of such contracts."[8] La. R.S. 40:2202(3)(b). BestComp, not Stratacare, contracted with each provider to create the PPO. Stratacare contracted with BestComp *after* the BestComp PPO was already established to access its discounted rates for the purpose of including those rates in its billing review software. Accessing an existing PPO is distinct from *establishing* or *forming* the PPO.

The evidence in the record indicates that the contract between BestComp and Stratacare never obligated Stratacare to contact, negotiate, or contract with providers, nor did Stratacare tender payment to them. Moreover, Stratacare had neither the obligation, nor the ability, to issue benefit cards or provide advance 30-day written notice. Once the payor receives a bill, Stratacare uses the PPO discounted rates to generate recommendations to its client-payors. These payors can accept, reject, or modify the recommendation; but, ultimately, the payor is the entity that decides whether to pay the amount recommended by Stratacare. Thus, the very nature of Stratacare's services is to generate recommendations regarding payments based on the BestComp PPO rates *after* the medical services have already been rendered and invoiced. It would lead to an absurd result to hold Stratacare, and by extension its insurers, liable for failing to provide notice *before* treatment was furnished.

Importantly, punitive statutes must be strictly construed. *Sullivan v. Wallace*, 2010-0388, p. 7 (La. 11/30/10), 51 So. 3d 702, 707. The court of appeal, however,

[8] "Such contracts" refers to the first paragraph of La. R.S. 40:2202(3), which addresses "contracts with providers for the purpose of establishing a preferred provider organization." Thus, both sections concern contractual agreements entered into to create PPOs.

adopted a broader concept of the 'group purchaser' definition encompassed in the statute. *Williams*, 2020-106 at 13-14, 333 So. 3d at 471. Louisiana Revised Statute 40:2203.1(B) provides, "A preferred provider organization's alternative rate of payment shall not be enforceable or binding upon any provider unless such organization is clearly identified on the benefit card issued *by the group purchaser or other entity accessing a group purchaser's contractual agreement or agreement*s and presented to the participating provider when medical care is provided." (Emphasis added). Thus, the statutory scheme recognizes both "group purchasers" and "other entit[ies] accessing a group purchaser's contractual agreement." Considering the purpose of Stratacare's contract with BestComp, it qualifies as an "other entity accessing a group purchaser's contractual agreement." The only legal significance to this classification, though, is that the alternative rate of payment may not be enforceable if a benefit card does not clearly identify the PPO or otherwise meet the statute's requirements for the card. Thus, the providers may be owed the difference between the discounted rates and the full standard rates of payment. Conversely, the penalty provision of La. R.S. 40:2203.1 G for failing to provide notice *only* applies to "group purchasers." It does not allow penalties against an "other entity accessing a group purchaser's contractual agreement." Clearly, the legislature intentionally distinguished between a "group purchaser" and an entity who has access to the PPO. Its decision to omit the latter's exposure to penalties for failure to comply with mandatory notice requirements can only be seen as deliberate. "[T]he time honored maxim, *expressio unius et exclusio alterius* . . . teaches us that when the legislature specifically enumerates a series of things, the legislature's omission of other items, which could have been easily included in the statute, is deemed intentional." *Theriot v. Midland Risk Ins. Co.*, 1995–2895, p. 4 (La. 5/20/97), 694 So.2d 184, 187. Further, the legislature is presumed to act with full knowledge of well-settled principles of statutory construction. *Monteville v.*

Terrebonne Par. Con. Gov't, 567 So.2d 1097 (La. 1990). The lower courts erred in failing to give legal effect to the legislature's deliberate omission, in failing to narrowly construe a punitive provision, and in failing to apply a plain language interpretation of the statute. Therefore, we find Stratacare is not a "group purchaser."

DECREE

Accordingly, we reverse the court of appeal, vacate the judgments of the lower courts, and dismiss the case, finding the statute not applicable to Stratacare or its insurers.[9] All other issues raised by Chartis and Landmark in their peremptory exceptions are mooted by our decision herein.

REVERSED; VACATED; AND CASE DISMISSED.

[9] Rulings on cross motions for summary judgment are linked and essentially reviewed together. *See Waterworks Dist. No. 1 of Desoto Par. v. Louisiana Dep't of Pub. Safety & Corr.*, 16-0744, p. 3 n.1 (La. App. 1 Cir. 2/17/17), 214 So.3d 1, 3, *writ denied*, 2017-0470 (La. 5/12/17), 219 So.3d 1103. (Although the denial of a motion for summary judgment "is an interlocutory judgment and is appealable only when expressly provided by law," where there are cross motions for summary judgment raising the same issues, "th[e]court can review the denial of a summary judgment in addressing the appeal of the granting of the cross motion for summary judgment.") Thus, in reversing the grant of summary judgment in favor of Plaintiffs, we also reverse the denial of summary judgment and dismiss the case against Chartis and Landmark.

SUPREME COURT OF LOUISIANA

No. 2022-C-00100 C/W No. 2022-C-00113

GEORGE RAYMOND WILLIAMS, M.D., ORTHOPAEDIC SURGERY, A PROFESSIONAL MEDICAL LLC, ET AL.

VERSUS

BESTCOMP, INC., ET AL.

On Writ of Certiorari to the Court of Appeal, Third Circuit,
Parish of St. Landry

HUGHES, J., dissenting in part and concurring in part.

While I agree with the result in this suit to recover under the penalty provisions of the Louisiana Preferred Provider Organization Act ("PPO Act"), La. R.S. 40:2201 et seq., dismissing the defendant/excess liability insurers since their insured was not a "group purchaser" for purposes of the PPO Act, I disagree with the majority opinion insofar as it narrowly construes the meaning of "group purchaser," under La. R.S. 40:2202, to exclude from the definition of "group purchaser" the status obtained in a contractual relationship such as we examined in **Wightman v. Ameritas Life Ins. Corp.**, 22-00364 (La. 10/21/22), ___ So.3d ___ (2022 WL 12396518) (wherein the PPO established with the plaintiff/dental providers by the contracting company, DenteMax, was leased by DenteMax to another company, Ameritas, for the purpose of providing Ameritas the right to access the negotiated discounted rates, agreed to by the dental providers in the DenteMax PPO contract, for its insureds (even though Ameritas had no direct contractual agreement with the DenteMax PPO dental providers)).[1] The instant case does not present a factual

[1] In **Wightman**, this court did not reach issues related to the validity of such an agreement or whether the dental providers could be bound by such an agreement between the company it directly contracted with and a third party company it did not contract with, since the matter was before this court on a certified question by the federal appellate court on the issue of the applicable prescriptive period, though we noted a potential basis for such an agreement, citing La. C.C. art. 1984 ("Rights and obligations arising from a contract are heritable and assignable unless the law, the terms of the contract or its nature preclude such effects."); La. C.C. art. 2642 ("All rights may be assigned, with the exception of those pertaining to obligations that are strictly personal. The assignee is subrogated to the rights of the assignor against the debtor."); La. C.C. art. 2713 ("The lessee has

scenario that would necessitate such a holding, as was presented in **Wightman**.

Herein, it is unnecessary to the resolution of the liability of the only remaining defendants in this case (the excess liability insurers of an alleged group purchaser) to determine whether an alleged group purchaser must have a direct contractual relationship with the medical providers under PPO Act, since the alleged group purchaser in this case, Stratacare, Inc., can be eliminated from the statutory definition of a group purchaser simply on the basis of the type of service that it provided to the admitted group purchaser, BestComp, which directly entered into the PPO contract with the plaintiff healthcare providers. BestComp did not contract with Stratacare in order to authorize Stratacare to obtain access to BestComp's negotiated discount rates with the healthcare providers; rather, BestComp hired Stratacare to provide them with billing related services. Unlike the alleged group purchaser in **Wightman**, Stratacare was not "leasing" the PPO's negotiated rate discounts for additional insureds to access these discounts, it was merely reviewing billing information and advising BestComp as to how the discounts should be applied to BestComp's insureds' bills. Therefore, this court's construction of the PPO Act in this case should not extend to encompass the factual scenario presented, but not ruled on, in **Wightman**, as no similar factual scenario is presented in this case.

Even though La. R.S. 40:2202(3) states as the definition of "group purchaser" that it "shall mean an organization or entity ***which contracts with providers*** for the purpose of establishing a preferred provider organization" (emphasis added), this

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the right to sublease the leased thing or to assign or encumber his rights in the lease, unless expressly prohibited by the contract of lease. A provision that prohibits one of these rights is deemed to prohibit the others, unless a contrary intent is expressed. In all other respects, a provision that prohibits subleasing, assigning, or encumbering is to be strictly construed against the lessor."). See **Wightman**, 22-00364 at p. 10 n.7. See also La. R.S. 22:1172 (applying only to dental services; enacted in the Network Leasing Act, by 2021 La. Acts, No. 26; and stating in pertinent part: "A contracting entity may grant a third party access to a provider network contract or a provider's dental services or contractual discounts pursuant to a provider network contract...").

provision must be read in conjunction with the other provisions of the PPO Act and "construed in harmony with the whole." See **Luv N' Care, Ltd. v. Jackel International Ltd.**, 19-0749, pp. 8-9 (La. 1/29/20), 347 So.3d 572, 578 (quoting **State v. Cazes**, 262 La. 202, 215-16, 263 So.2d 8, 12 (1972)); see also La. C.C. art. 13 ("Laws on the same subject matter must be interpreted in reference to each other."). Because La. R.S. 40:2203.1(B), which references the necessity that insureds of an "other entity accessing a group purchaser's contractual agreement or agreements" present a benefit card on which the "other entity" is listed to a "participating provider when medical care is provided," the inference is that a group purchaser, who has contracted with PPO healthcare providers may contractually grant to another company the right to access the negotiated discount rates even though the "other entity" has not itself directly contracted with the heathcare providers, as was asserted in **Wightman**. The issue of whether, in all cases, a "group purchaser" under the PPO Act must have a direct contract with the PPO heathcare providers in order to have the benefits of the PPO and/or to be subject to the PPO Act is an "abstract or purely academic issue" not ripe for adjudication (see **SWAT 24 Shreveport Bossier, Inc. v. Bond**, 00-1695 (La. 6/29/01), 808 So.2d 294, 309) in this case; therefore, this court should reserve a decision on this issue until such time as it becomes a justiciable in a case before this court.