20-P-161 Appeals Court

METROPOLITAN PROPERTY AND CASUALTY INSURANCE COMPANY vs. EMERSON HOSPITAL.

No. 20-P-161.

Middlesex. October 9, 2020. - May 5, 2021.

Present: Milkey, Blake, & Henry, JJ.

Insurance, No-fault insurance, Motor vehicle insurance, Motor vehicle personal injury protection benefits, Commissioner of Insurance. Consumer Protection Act, Insurance. Health Care. Hospital, Charges for services. Contract, With hospital. Statute, Construction.

Civil action commenced in the Superior Court Department on May 19, 2017.

The case was heard by Hélène Kazanjian, J., on a case stated.

Francis A. Gaimari for the defendant.
Gregory K. Lyon for the plaintiff.
The following submitted briefs for amici curiae:
Heather L. Zengilowski for Law Offices of PIP Collect, LLC.
Robert A. DiTusa & Laura D. Mangini for Massachusetts Chiropractic Society, Inc.
David L. Arrington, Eli Milne, & Madeline Aller, of Utah, & Philip A. O'Connell, Jr., & Tony K. Lu for Mitchell International, Inc.

HENRY, J. Emerson Hospital (Emerson) contracted with third party Coventry Health Care Network, Inc. (Coventry), to accept a discounted rate from payors in the Coventry network in return for prompt payment for medical services. Metropolitan Property and Casualty Insurance Company (Metropolitan), which offers automobile insurance, is one of those payors through its own contract with Coventry. Emerson provided medical services to individuals insured by Metropolitan who had been injured in automobile accidents, and Emerson now seeks reimbursement from Metropolitan at rates higher than those set forth in Emerson's contract with Coventry. We are called upon to decide whether the amounts Emerson is owed are controlled by the two contracts or whether the arrangement runs afoul of the no-fault automobile insurance scheme embodied in G. L. c. 90, §§ 34A and 34M (no-fault scheme) or of other statutes. Specifically, we address Emerson's arguments that the contract between Metropolitan and Coventry is void and unenforceable because it (1) conflicts with the no-fault scheme; (2) required the approval of the Commissioner of Insurance (commissioner) as an automobile insurance contract, pursuant to the same statute; (3) required the approval of the commissioner as a preferred provider arrangement, pursuant to G. L. c. 176I, §§ 1 and 2 (or, alternatively, Metropolitan was barred entirely from entering into a preferred provider arrangement); or (4) violates the

prohibition on unfair and deceptive business practices for insurers, G. L. c. 176D.[1] We conclude that Metropolitan's contractual arrangement with Coventry does not conflict with any of these statutes. Accordingly, we affirm the judgment, as corrected, in favor of Metropolitan.[2]

Factual background. The parties submitted the matter to a Superior Court judge as a case stated, stipulating to all relevant facts and leaving the judge only to "apply the correct principles of law and decide the case." Langdoc v. Gevaert Co. of Am., 315 Mass. 8, 10 (1943). See Massachusetts Bay Transp. Auth. v. Somerville, 451 Mass. 80, 84 (2008).

The parties agreed to the following relevant facts: Metropolitan entered into a contract with Coventry effective March 1, 2009, in which Coventry guaranteed Metropolitan access to a pool of medical providers who would accept lower reimbursement rates from Metropolitan in exchange for prompt payment at the agreed-upon rates. Coventry and Emerson subsequently entered into a contract, effective October 1, 2010, for Emerson to be a part of that pool of medical providers.

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[1] Emerson does not otherwise challenge the contracts.

[2] We acknowledge the amicus brief submitted by Mitchell International, Inc., in support of Metropolitan, and the amicus briefs submitted by the Massachusetts Chiropractic Society, Inc., and PIP Collect, LLC, in support of Emerson.

Metropolitan is not a party to Emerson's contract with Coventry nor is Emerson a party to Metropolitan's contract with Coventry.

1. The Metropolitan contract with Coventry. Coventry agreed to grant Metropolitan access to its database of medical providers that had agreed to accept reduced rates, "as set forth in the Provider Agreement."[3] In exchange for this access, Metropolitan agreed to use Coventry's network of providers, Coventry Auto Solutions, and to pay providers in Coventry Auto Solutions "the Contract Rate for all Compensable Services that are not disputed within the earlier of: (a) the time period permitted by applicable law, if any, or (b) thirty (30) days [from] the date [Metropolitan] receives a complete and

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[3] Paragraph 3.1 of the Metropolitan contract with Coventry provides:

> "Coventry agrees that it has the ability to add [Metropolitan] for utilization of Coventry Auto Solutions [defined elsewhere in the contract as 'Coventry's networks of Contract Providers, including . . . physician groups, hospital networks, and outpatient care networks'], and that Coventry has the authority to provide a list of Contract Providers who are in Coventry Auto Solutions to [Metropolitan]. Coventry shall provide [Metropolitan] with a unique identification number to enable [Metropolitan] to access Coventry's internet site that lists Contract Providers who are in Coventry Auto Solutions."

Paragraph 1.5 of the Metropolitan contract with Coventry provides:

> "Contract Provider means a Medical Services provider, including physician, hospital, and other providers of Medical Services, who has entered into a Provider Agreement with Coventry to provide Compensable Services."

accurate bill from Contract Provider." The contract rate is "as set forth in the Provider Agreement: (i) the lesser of the rate in the Provider Fee Schedule or the Allowable Rate; or (ii) the rate in the Provider Fee Schedule." Paragraph 3.4 of the Metropolitan-Coventry contract also provides that "[t]he parties acknowledge and agree that: (a) Coventry does not provide, direct, or control the provision of Medical Services to Insured Parties." Coventry agreed, in paragraph 3.5, to be "solely responsible for administration of Coventry Auto Solutions, including, but not limited to: (i) maintaining and updating accurate Contract Provider lists; (ii) notification by Coventry to Contract Providers of [Metropolitan]'s participation in utilization of Coventry Auto Solutions; and (iii) listing [Metropolitan] as a participant in utilization of Coventry Auto Solutions . . . ."

2. The Coventry contract with Emerson. For insurers in the Coventry network, Emerson agreed to accept a thirty percent discount in reimbursement rates "from provider[']s billed

charges."[4] In exchange, Coventry agreed -- on its own behalf and on behalf of payors in its network[5] -- to pay Emerson promptly for covered services. At the time Emerson and Coventry entered into a contract, Metropolitan was a payor as defined in the Emerson and Coventry contract. See note 5, supra. Paragraph 3.1.3 of the Coventry-Emerson contract further provides that "payment for Covered Services pursuant to the Agreement shall constitute payment in full for all hospital/professional services for which [the] Hospital bills . . . ."

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[4] Paragraph 3.1.1 of the Coventry-Emerson contract provides:

"In consideration of [Emerson's] agreement to perform Covered Services in accordance with the Agreement, [Emerson] shall be paid for Covered Services performed according to the terms set forth in [the contract]."

"Covered Services" are defined as

"[a]ll of the health care services and supplies: (a) that are Medically Necessary; (b) that are generally available at [the] Hospital; (c) that [the] Hospital is licensed to provide to Members; and (d) that are covered under the terms of the applicable Member Contract."

[5] The Emerson-Coventry contract defines "Payor" as

"[a]n employer, trust fund, insurance carrier, including but not limited to, workers compensation carriers, auto insurance carriers, health care service plan, trust, nonprofit hospital service plan, a governmental unit, a Coventry Company and any other entity which has an obligation to arrange or provide medical services or benefits for such services to Members or any other entity which has contracted with [Coventry] to use a [Coventry] network of providers."

3. Emergency care for Metropolitan insureds. At issue here is medical care Emerson provided to five persons insured by Metropolitan after car accidents in which each person sustained injury. Emerson furnished medically necessary treatment for injuries causally related to the accidents. There is no evidence that Metropolitan required the patients to receive care at Emerson. Emerson's bills for each patient were reasonable in their face amount. Metropolitan timely paid Emerson the amounts set forth in the contract between Emerson and Coventry. Each patient had remaining insurance coverage greater than the unpaid balance; no patient was individually responsible for any additional charges.

Discussion. 1. Standard of review. "Because the judge issued her decision on a case stated basis, we review it de novo . . . ." Hickey v. Pathways Ass'n, 472 Mass. 735, 743 (2015). See Rock v. Pittsfield, 316 Mass. 348, 349 (1944) (only question before appellate court is "whether the decision was right on the facts stated and proper inferences therefrom").

2. The no-fault insurance scheme. a. Preemption of Metropolitan contract with Coventry. Emerson argues that the no-fault automobile insurance scheme set forth in G. L. c. 90, §§ 34A and 34M, preempts the contract between Metropolitan and Coventry. As part of this argument, Emerson also contends that the no-fault scheme prevents Metropolitan from paying anything

less than a reasonable rate and that, because the parties stipulated that the rate billed was reasonable, Metropolitan is required to pay the amount billed rather than the contract rate.

Massachusetts requires that automobile insurers "provide personal injury protection benefits," which are "granted in lieu of damages otherwise recoverable by the injured person or persons in tort as a result of an accident." G. L. c. 90, § 34M. This is known as a no-fault automobile insurance scheme, as insurers are required to provide a certain level of coverage to injured parties regardless of culpability. Such personal injury protection (PIP) benefits must include:

> "payment to the named insured . . . of all reasonable expenses incurred within two years from the date of accident for necessary medical, surgical, x-ray, and dental services, including prosthetic devices and necessary ambulance, hospital, [and] professional nursing . . . services . . . [up to] eight thousand dollars on account of injury to . . . any one person . . . ."

G. L. c. 90, § 34A. Such automobile insurance policies must be sent to the commissioner for approval, and the policies "shall not conflict with" the no-fault insurance scheme. G. L. c. 175, § 113A. See G. L. c. 90, §§ 34A, 34M.

The no-fault automobile insurance scheme requires insureds to "surrender[] the possibly minimal damages for pain and suffering" in exchange for "the security of prompt and certain recovery." Pinnick v. Cleary, 360 Mass. 1, 6 (1971). The purposes of the statutory scheme are to "reduce the number of

small motor vehicle tort cases being entered in the courts of the Commonwealth, to provide a prompt, inexpensive means of reimbursing claimants for out-of-pocket expenses, and to address the high cost of motor vehicle insurance in the Commonwealth." Flanagan v. Liberty Mut. Ins. Co., 383 Mass. 195, 198 (1981). See Chipman v. Massachusetts Bay Transp. Auth., 366 Mass. 253, 255 n.3, 256-257 (1974); Pinnick, supra at 16 ("The ills against which [the no-fault insurance scheme] is aimed are obvious. One of the most prominent . . . [is] the burden of litigation . . ."). The no-fault insurance scheme also "might have been designed to cure . . . the inequities which have been visited upon claimants," especially the burden of long delays in financial assistance and the uneven awards granted by juries. Id. at 20.

Our goal in interpreting a statute is to give effect to "the purpose of its framers." Dominguez v. Liberty Mut. Ins. Co., 429 Mass. 112, 115 (1999), quoting Board of Educ. v. Assessor of Worcester, 368 Mass. 511, 513 (1975). We interpret a statute "according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished." Id.

In reviewing the no-fault statutory scheme, the Supreme Judicial Court has said:

> "When we examined the 'no-fault' legislation of 1970[,] . . . we said it was the 'first legislative attempt at a fundamental alteration and modernization of an important segment of the common law of torts.' Pinnick . . . , 360 Mass. [at] 3 . . . . In so large a legislative enterprise, there are likely to be casual overstatements and understatements, half-answers, and gaps in the statutory provisions. As practice develops and the difficulties are revealed, the courts are called on to interweave the statute with decisions answering the difficulties and composing, as far as feasible and reasonable, an harmonious structure faithful to the basic designs and purposes of the Legislature."

Mailhot v. Travelers Ins. Co., 375 Mass. 342, 345 (1978). In Mailhot, the court discussed with approval cases that created a "reasoned confinement of the application of the legislation in deference to its purposes" as well as cases that had "la[id] down . . . a rule adjacent to the statute . . . which in a sense enlarged it." Id. at 346. See Intriligator v. Boston, 395 Mass. 489, 491-492 (1985) ("The [Mailhot] court noted other cases in which it had not applied the no-fault law literally and thus had fulfilled the over-all legislative purpose"). The court has thus looked to the purposes of the no-fault legislation to apply it in a common-sense manner.

The Metropolitan-Coventry contract is not expressly preempted by the no-fault insurance scheme, as nothing in that scheme contemplates this type of contract. See G. L. c. 90, §§ 34A, 34M. Nor does the contract conflict with that scheme:

it does not bear on tort liability for costs from an automobile accident or any injury, death, or loss of wages therefrom; it does not obligate an insurer to pay for unreasonable medical expenses, as in Columbia Chiropractic Group, Inc. v. Trust Ins. Co., 430 Mass. 60, 61 (1999); and it does not increase the cost of automobile insurance premiums, see Pinnick, 360 Mass. at 20. Most importantly, the contract does not reduce the amount Metropolitan must pay in PIP benefits to insured persons: a person injured in an automobile accident has the same amount of PIP benefits -- $8,000 -- available with or without this contract.

Indeed, the Metropolitan-Coventry contract decreases the cost of medical services rendered to individual patients, thereby potentially making more medical care available for less money. When a patient receives care at Emerson that is covered by that patient's Metropolitan-provided PIP benefits, the patient has -- pursuant to the Emerson-Coventry contract -- the opportunity for approximately thirty percent more medical care covered by insurance. For example, if Emerson's standard billing rate for the care a particular patient received was $8,000 -- the exact amount of PIP benefits Metropolitan is required by law to provide -- Metropolitan, as a contractually-defined payor, would be entitled by the terms of Emerson's contract with Coventry to a thirty percent discount on the cost,

in other words, to pay only $5,600 for that care. The patient therefore would retain $2,400 in PIP benefits that could be used for additional medical care. The benefit will be largest for those patients who are seriously injured and whose hospital bills, but for this contractual discount, would exceed the required $8,000 in PIP coverage. In fact, in those circumstances, the contracts here will work together in furtherance of the statutory purposes by making available additional care covered by insurance.

b. "All reasonable expenses." Emerson also argues that the discounts provided in the contract between Metropolitan and Coventry do not apply to services provided after automobile accidents, as the PIP scheme requires the payment of "all reasonable expenses." G. L. c. 90, § 34. What is "reasonable" is a context-specific question. We do not read the statutory requirement to pay "all reasonable expenses" to preclude sophisticated parties from contracting for a different reasonable amount to reduce the cost of healthcare. In light of the purposes of the no-fault automobile insurance scheme, the reference to "all reasonable expenses" in the statute guarantees that insurers compensate insured persons for actual injuries and economic losses; it does not set reimbursement rates between insurers and medical providers. See Fascione v. CNA Ins. Cos., 435 Mass. 88, 94 (2001), quoting Pinnick, 360 Mass. at 8 ("PIP

benefits were instituted to provide injured parties with their 'most pressing items of cost' without the complication and time involved in determining the party at fault for the motor vehicle accident"). The contract between Metropolitan and Coventry is consistent with the no-fault scheme: it reduces costs and increases efficiency, while increasing the availability of care to an injured person.

Emerson's argument also overlooks that while the parties stipulated that the rates billed for the emergency services provided here were reasonable, the parties did not stipulate that the billed amounts were the only reasonable rate for the services provided.

We therefore conclude that the contract between Metropolitan and Coventry not only does not conflict with the no-fault automobile insurance scheme, but instead helps create "an harmonious structure faithful to the basic designs and purposes of the Legislature." Mailhot, 375 Mass. at 345.[6]

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[6] Relatedly, Emerson argues that the contract between Emerson and Coventry requires payors, like Metropolitan, to pay "all reasonably necessary costs" for emergency services. Emerson's contractual argument is based on paragraph 4 of the Emerson-Coventry contract, entitled "eligibility and authorization," which discusses how to verify a patient's insurance coverage, what happens when a patient lacks prior authorization for care, and when a patient's insurance does not cover medical care. Paragraph 4.2 of the contract, "emergency services," in which the "all reasonably necessary costs" language appears, discusses compliance with State and Federal law, notification of an insurer after a patient is admitted to

c. Commissioner of Insurance approval. Emerson also contends that because the commissioner did not approve the Metropolitan-Coventry contract, the contract violates the PIP scheme, and is therefore void.[7] As discussed above, the commissioner must approve automobile insurance policies offered in Massachusetts. See G. L. c. 90, §§ 34A, 34M; G. L. c. 175, § 113A. The Metropolitan-Coventry contract, however, is not an automobile insurance policy. Furthermore, as discussed above, the Metropolitan-Coventry contract does not operate to reduce or cancel Metropolitan's statutorily required PIP coverage. Neither Metropolitan nor Coventry was therefore required to obtain the approval of the commissioner under the no-fault automobile insurance statutes prior to entering into the Metropolitan-Coventry contract. See G. L. c. 90, §§ 34A, 34M; G. L. c. 175, § 113A.

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the hospital through the emergency room, and how to obtain authorization for services provided. In context, therefore, this provision ensures that an insurer covers medical care provided, including emergency services, when a patient has not obtained prior authorization for such care. Finally, there is no evidence that the reference to reasonable costs in this paragraph is intended to establish a particular dollar amount that is different from the rates in the provider fee schedule, as Emerson contends. See Balles v. Babcock Power Inc., 476 Mass. 565, 571 (2017) ("[W]hen the language of a contract is clear, it alone determines the contract's meaning . . .").

[7] The Attorney General declined our invitation to file an amicus brief on behalf of the commissioner.

3. Preferred provider arrangements. Emerson also argues that the contract between Metropolitan and Coventry functions as a preferred provider arrangement, which is governed by G. L. c. 176I, §§ 1-12 (PPO statute). Under the PPO statute, a preferred provider arrangement cannot be formed without the approval of the commissioner.[8] See G. L. c. 176I, §§ 1, 2. See also 211 Code Mass. Regs. §§ 51.03-51.05 (2005). A preferred provider, which is a "health care provider or group of health care providers who have contracted to provide specified covered services," can enter into a contract with an "[o]rganization" to create a preferred provider arrangement.[9] G. L. c. 176I, § 1. The definition of "[o]rganization" includes a number of entities but does not include automobile insurers. An "[o]rganization" is:

[8] Emerson focuses the majority of its arguments, and especially this argument, on only one of the contracts (the Metropolitan-Coventry contract), although that contract works in harmony with the Emerson-Coventry contract.

[9] Preferred provider arrangements, at minimum and among other things, must provide benefit levels for nonpreferred providers of "at least eighty per cent of the benefit levels for services rendered by preferred providers," create a process "for resolving consumer complaints and grievances," disclose the names of preferred providers to insured persons, and, "[i]f a covered person receives emergency care and cannot reasonably reach a preferred provider," pay for any care "related to the emergency . . . at the same level and in the same manner as if the covered person had been treated by a preferred provider." G. L. c. 176I, § 3. See 211 Code Mass. Regs. §§ 51.04, 51.05.

> "an insurer authorized to write accident and health insurance under chapter one hundred and seventy-five, a nonprofit hospital service corporation authorized under chapter one hundred and seventy-six A, a nonprofit medical service corporation authorized under chapter one hundred and seventy-six B, a dental service corporation authorized under chapter one hundred and seventy-six E, an optometric service corporation authorized under chapter one hundred and seventy-six F, a health maintenance organization authorized under chapter one hundred and seventy-six G, an insurer as defined in paragraph (7) of section one of chapter one hundred and fifty-two, or any other entity approved by the commissioner under this chapter."

G. L. c. 176I, § 1.

Emerson agrees that an automobile insurer fits none of the enumerated categories, and makes no argument that G. L. c. 176I, § 1, applies to Coventry. "Accident and health" insurers are governed by G. L. c. 175, §§ 108-111; automobile insurers are regulated by G. L. c. 175, §§ 113A-113X. Metropolitan is neither a health care provider nor "any other entity approved by the commissioner," and is therefore not an "[o]rganization" as defined in G. L. c. 176I, § 1. Because neither Coventry nor Metropolitan is an "[o]rganization" within the meaning of the PPO statute, the statute does not apply, and the Metropolitan-Coventry contract does not need to be approved by the commissioner under this statute.

It is a "maxim of statutory construction . . . that a statutory expression of one thing is an implied exclusion of other things omitted from the statute." Harborview Residents' Comm., Inc. v. Quincy Hous. Auth., 368 Mass. 425, 432 (1975).

See Skawski v. Greenfield Investors Prop. Dev. LLC, 473 Mass. 580, 588 (2016) ("expressio unius est exclusio alterius"). "[A] court may not add words to [the] statute that the Legislature did not put there, either by inadvertent omission or by design" (quotation and citation omitted). Bank of Am., N.A. v. Rosa, 466 Mass. 613, 618 (2013). This principle, however, "should not be applied where to do so would frustrate the general beneficial purposes of the legislation." Id. at 619-620.

The Metropolitan-Coventry contract does not implicate the concerns of the PPO statute because it does not steer patients to providers or restrict patients' choice of provider, establish or limit Metropolitan's payment responsibilities to other providers, create an exclusive relationship with Emerson or other preferred providers, and does not have any effect on insured patients other than, as discussed above, potentially making more health care available to them. See Rosa, 466 Mass. at 619. Rather, the Metropolitan-Coventry contract operates with the Emerson-Coventry contract to create discounts to be applied in cases where PIP insureds fortuitously seek treatment from Emerson. The commissioner therefore was not required to approve this contract.[10]

[10] Emerson also raises the question whether the contract between Metropolitan and Coventry operates as a "silent PPO," citing First Health Group Corp. v. United Payors & United Providers, Inc., 95 F. Supp. 2d 845, 850 (N.D. Ill. 2000). That

4. Unfair competition and deceptive practices. Emerson also contends that the Metropolitan-Coventry contract violates G. L. c. 176D and its prohibition on unfair competition and deceptive practices in the insurance industry. Specifically, Emerson argues that the Metropolitan-Coventry contract set the rate at which Metropolitan would reimburse Emerson "by reference to the price paid, or the average of prices paid, to [Emerson] under a contract or contracts with any other . . . insurance company . . . or preferred provider arrangement." G. L. c. 176D, § 3 (4) (c). See G. L. c. 176D, § 3A (iii).

However, there is no evidence that Metropolitan knew or attempted to discover the price other insurers pay to Emerson. It is also not readily apparent whether Metropolitan knew the precise rates at which it would reimburse Emerson at the time Metropolitan entered into the contract with Coventry. The Metropolitan-Coventry contract does not state a specific dollar amount for reimbursements: it provides only that Metropolitan will pay providers "the rate specified in the Provider Agreement," which "may be in the form of per diems; case or procedure rates; discounts off charges; rates that are above, below, or at the state fee schedule; billed charges; or other

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case, however, is not binding on us, and our discussion of the relevant Massachusetts statutes disposes of this argument.

reimbursement methods." We therefore conclude that Metropolitan did not engage in unfair or deceptive practices.

Conclusion. We thus conclude that Metropolitan is entitled to the benefit of both the Metropolitan-Coventry and Emerson-Coventry contracts.[11]

Judgment, as corrected, affirmed.

[11] Emerson's requests for appellate attorney's fees and attorney's fees pursuant to the no-fault statute are denied.