

Rigney v Liberty Mut. Ins. Co.
2018 NY Slip Op 33833(U)
April 24, 2018
Supreme Court, Nassau County
Docket Number: 605489-17
Judge: Robert A. Bruno
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SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

PRESENT: HON. ROBERT A. BRUNO, J.S.C.

-----x

JOHN T. RIGNEY, M.D.,

Plaintiff,

TRIAL/IAS PART 13

Index No.: 605489-17

Submission Date: 2-23-18

Motion Sequence: 001, 002

-against-

LIBERTY MUTUAL INSURANCE COMPANY,
LM INSURANCE CORPORATION, THE FIRST
LIBERTY INSURANCE CORPORATION,
LIBERTY MUTUAL FIRE INSURANCE COMPANY
LIBERTY INSURANCE CORPORATION, and
LIBERTY MUTUAL MID-ATLANTIC
INSURANCE COMPANY,

Defendants.

DECISION & ORDER

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Papers Numbered

<i>Sequence #001</i>	
Notice of Motion, Affirmation & Exhibits	1
 <i>Sequence #002</i>	
Notice of Cross- Motion, Affirmation in Opposition & in Support, Exhibits.....	1
Verified Complaint.....	2
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Upon the foregoing papers, the following motions are determined as set forth below:

Sequence #001: Motion by defendants LIBERTY MUTUAL INSURANCE COMPANY, LM INSURANCE CORPORATION, THE FIRST LIBERTY INSURANCE CORPORATION, LIBERTY MUTUAL FIRE INSURANCE COMPANY LIBERTY INSURANCE CORPORATION, and LIBERTY MUTUAL MID-ATLANTIC INSURANCE COMPANY (“defendant” or “LIBERTY MUTUAL”) for an Order pursuant to CPLR §3212, A) granting defendant summary judgment as to the allegations raised in plaintiff’s Complaint; and B) granting defendant summary judgment as to the allegations raised in the defendant’s counterclaims contained in its Answer; C) declaring and granting a permanent injunction barring any future billing for No-Fault benefits by plaintiff to defendant; D) declaring that the denials of all claims for No-Fault benefits by the defendant to the plaintiff be deemed valid; and E) permanently staying arbitration for all bills involved herein.

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Sequence #002. Cross-motion by plaintiff JOHN T. RIGNEY, M.D. (“plaintiff” or “Dr. RIGNEY”) for an Order pursuant to CPLR §3212, granting summary judgment in favor of plaintiff and dismissing defendant’s counter-claims.

This is an action for declaratory judgment, arising from defendant’s denial of claims for No Fault Benefits made by plaintiff, in his individual capacity, as provider assignee of LIBERTY MUTUAL insureds. Defendant denied such claims on the basis of a Settlement Agreement and Release entered into on September 16, 2010 (the “Agreement”), which resolved certain billing disputes between LIBERTY MUTUAL and professional corporations owned by plaintiff, in exchange for which the provider parties relinquished any right to future No Fault payments by LIBERTY MUTUAL.

It is undisputed that the Agreement bars any payment of No Fault Claims brought by any medical professional corporation owned by Dr. RIGNEY, either at the time of the Agreement or in the future. The central issue of this case is whether the Agreement bars plaintiff from recovering No Fault Benefits for services provided and billed by plaintiff in his individual capacity, in his own name and under his own Social Security number.

The Court begins with examination of the Agreement. “The fundamental, neutral precept of contract interpretation is that agreements are construed in accord with the parties’ intent.” *Greenfield v Philles Records, Inc.*, 98 NY2d 562 (2002). See also *Givati v Air Techniques, Inc.*, 104 AD3d 644, 645 (2d Dept. 2013); see also *Katina, Inc. v Famiglietti*, 306 AD2d 440, 441 (2d Dept 2003). “The best evidence of what parties to a written agreement intend is what they say in their writing... Thus, a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms. *Greenfield*, 98 NY2d at 569.

In the Agreement at bar, the Parties are defined as several affiliated entities of LIBERTY MUTUAL and “all current and future medical professional corporations owned in whole or in part by Dr. John Rigney..., including but not limited to Diagnostic Radiographic Imaging, P.C., Distinguished Diagnostic Imaging, P.C., Innovative MR Imaging, P.C. and Urban Radiology P.C., collectively referred to hereinafter as “Rigney Facilities” or individually as a “Rigney Facility.” The Agreement provides, “[t]he Terms of this Settlement Agreement are intended to be binding on the Parties hereto, their officers, directors, members, managers, agents, servants and employees, as well as their heirs, successors and assigns.” The Agreement states:

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WHEREAS, the Parties have further agreed that future billing from the Rigney Facilities to Liberty Mutual for claims shall be allowed but the Parties agree that no payments by Liberty Mutual to the Rigney Facilities will be made, as set forth herein; and

NOW, THEREFORE, the Parties hereby agree as follows:

1. Release and Discharge

For and in consideration of the actions to be taken by the Parties as stated within this Settlement Agreement, the undersigned, the Rigney Facilities do, for themselves and their agents, heirs, administrators, executors, successors, assignees, employees and insurers, hereby release, acquit and forever discharge Liberty Mutual, its agents, heirs, administrators, executors, successors, assignees, and insurers, and Liberty Mutual's insured and claimants seeking benefits under a Liberty Mutual insurance policy from any and all past, present and future claims, suits, demands, losses, costs, actions, and/or expenses that have been asserted or could be asserted in any Legal Action in any venue including Arbitration or relating to and/or arising out of any past, present or future claims for No-Fault benefits except as set forth in this Settlement Agreement."

Plaintiff argues that the Agreement is clear on its face. The only Parties to the Agreement are those described in the Agreement itself – namely, all current and future medical professional corporations owned by Dr. RIGNEY. Although Dr. RIGNEY is bound by the Agreement in his capacity as a principal of the professional corporations, he is only barred from receiving payment in that capacity, on behalf of the professional corporations. He is not a party to the Agreement in his individual capacity, and thus, he is not barred from receiving No Fault benefits for claims made on behalf of himself as an individual medical provider.

Defendant argues that the intent of the Agreement, based on the circumstances in which it arose, was clearly to exclude all future payments of No Fault benefits to Dr. RIGNEY or any related entity. To interpret the Agreement otherwise would afford Dr. RIGNEY a means to circumvent the Agreement and to avoid its restrictions entirely, merely by bringing claims in his own name. This, in defendant's view, is contrary to, and entirely defeats, the intent of the Agreement.

If the Agreement were ambiguous, the Court would be free to consider defendant's interpretation. The Court finds, however, that the Agreement, on its face and by its plain language, is reasonably susceptible of only one meaning – that the parties thereto do not include Dr. RIGNEY in his individual capacity. Although the Court believes that the parties may have intended or assumed that all claims by Dr. RIGNEY, in any capacity, would be excluded from future benefits, that is not what is written in the Agreement. The Court "is not free to alter the contract to reflect its personal notions of fairness and equity." *Greenfield*, 98 NY2d at 569-570.

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That does not end the inquiry, however. Plaintiff makes much of the distinction between Dr. RIGNEY in his capacity as principal of a professional corporation, and Dr. RIGNEY in his capacity as an individual medical provider. Assuming that this distinction is legally valid, the question becomes: which Dr. RIGNEY provided the services for which billing was submitted to LIBERTY MUTUAL?

The parties did not address this question directly, but presented evidence relevant thereto, including the testimony of Dr. RIGNEY at his No Fault Examinations Under Oath conducted on September 10, 2014 and November 11, 2015 (*Mot. Exhs. G & H*). Dr. RIGNEY testified that (i) he is the sole owner of RedTree Radiology, P.C. ("RedTree") a professional corporation operating at 1570 Old Country Road; (ii) he, individually, owns the one MRI machine used at that location; (iii) the services in question were performed at this location; (iv) patients come for diagnostic testing by referral to RedTree, even those whose claims were billed to LIBERTY MUTUAL under Dr. RIGNEY's individual Social Security number; (v) MRIs performed at 1570 Old Country Road are generally billed to insurers other than LIBERTY MUTUAL as RedTree bills; only those billed to LIBERTY MUTUAL are billed under Dr. RIGNEY's Social Security number; if it weren't for the Agreement, he would bill LIBERTY MUTUAL under RedTree's name; (vi) the persons who perform the MRI and Xray services are employees of Dr. RIGNEY individually when he bills under his own Social Security number, and are otherwise employees of RedTree. They are paid on an hourly basis and submit invoices to Dr. RIGNEY individually for such work, and their RedTree salaries are adjusted accordingly.

The Court finds that it cannot make a determination as a matter of law on the basis of the above evidence, which is inconclusive and unsupported by documentation. Rather than answers, it provokes further questions, including, but not limited to, whether Dr. RIGNEY has any other individual earnings as a medical provider; whether he reports individual earnings and/or employee, facility or equipment expenses on his personal income tax; what (if any) expenses are reported by RedTree with respect to the equipment or facilities; whether Dr. RIGNEY has professional malpractice insurance covering services he provides in an individual capacity. Ultimately, the Court finds issues of fact as to whether the purported provision of medical services by Dr. RIGNEY in his individual capacity is a fiction offered to circumvent the restrictions on RedTree under the Agreement, or is a reality supported by consistent treatment and documentary proof. The ultimate determination with respect to the propriety of defendant's disclaimers turns on the resolution of this question, which is reserved for the trier of fact. Based upon the foregoing, the Court does not reach the issues raised by defendant regarding the fee schedule or propriety of billing.

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The Court has considered the remaining contentions of the parties and finds that they do not require discussion or alter the determination herein. Accordingly, it is

ORDERED, that defendant's motion an Order pursuant to CPLR §3212, A) granting defendant summary judgment as to the allegations raised in plaintiff's Complaint; and B) granting defendant summary judgment as to the allegations raised in the defendant's counterclaims contained in its Answer; C) declaring and granting a permanent injunction barring any future billing for No-Fault benefits by plaintiff to defendant; D) declaring that the denials of all claims for No-Fault benefits by the defendant to the plaintiff be deemed valid; and E) permanently staying arbitration for all bills involved herein (*Sequence #001*) is *denied*; and it is further

ORDERED, that plaintiff's cross-motion for an Order pursuant to CPLR §3212, granting summary judgment in favor of plaintiff and dismissing defendant's counter-claims (*Sequence #002*) is *denied*; and it is further

ORDERED, that the parties shall appear for a conference to discuss further proceedings on this matter on **Thursday, June 21, 2018** at 9:30 am in Part 13 of the Supreme Court, Nassau County, 100 Supreme Court Drive, Mineola, NY, which conference shall not be adjourned without the consent of the Court.

All matters not decided herein are denied.

This constitutes the Decision and Order of this Court.

Dated: April 24, 2018
Mineola, New York

ENTER:



Hon. Robert A. Bruno, J.S.C.

ENTERED
APR 26 2018
NASSAU COUNTY
COUNTY CLERK'S OFFICE