

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE CHILDREN'S HOSPITAL  
OF PHILADELPHIA

v.

INDEPENDENCE BLUE CROSS, et al.

O'Neill, J.

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CIVIL ACTION

NO. 99-CV-5532

April , 2000

MEMORANDUM

Plaintiff Children's Hospital of Philadelphia (CHOP) brings this action for monetary damages and injunctive relief against defendants Independence Blue Cross (IBC), a nonprofit hospital plan corporation, and various IBC affiliates. In the complaint plaintiff alleges that defendants violated the Lanham Act by using plaintiff's name in various health insurance promotions after the expiration of the 1996 Letter Agreement between CHOP and IBC. Plaintiff also claims that defendants failed to pay plaintiff's usual and customary charges for medical services provided to defendants' health plan subscribers after the letter agreement's expiration.

By motion filed January 7, 2000, defendants asked that I dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendants argued that plaintiff had failed to state a claim for which relief could be granted since the 1996 Letter Agreement had not been terminated by CHOP in accordance with Pennsylvania law. More specifically, defendants contended that CHOP failed to give advance notice of its intent to terminate the agreement as required by provisions of the Pennsylvania Hospital Plan Corporation Act ("Act 94") and the Pennsylvania

Administrative Code. By Orders dated March 22 and 23, 2000, I denied defendants' motion predicting that the Supreme Court of Pennsylvania would hold that the notice provisions relied upon by defendants do not apply to a contract which has expired according to its own terms. I based this conclusion on the statutory language and on the fact that requiring one party to give notice of an express contract term would serve no purpose. I also held that even if notice of the expiration of a contract were required by Pennsylvania law, plaintiff did in fact provide such notice to both the Pennsylvania Insurance Department (PID) and IBC in separate letters dated July 14 and 15, 1999 and that plaintiff's "termination" of the agreement would have been effective 90 days after receipt of those letters. Finally, I noted that the PID took no action in response to plaintiff's letter.

Presently before me are defendants' motion to refer to the PID issues under Act 94 and for a stay or, in the alternative, to certify the orders denying the motion to dismiss pursuant to 28 U.S.C. § 1292(b), and plaintiff's response thereto. Having failed to prevail on their previous motion, defendants, in what seems to me to be a complete about-face, now argue that I should refer the issue of whether the contract was properly terminated by CHOP to the PID pursuant to the principles of primary jurisdiction. In other words, defendants now contend that I should not have decided the issue which their motion presented to me and asked me to decide.<sup>1</sup>

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<sup>1</sup> Defendants' present brief states:

By Order entered March 23, 2000, this Court denied Defendants' Motion to Dismiss. An underlying position of Defendants in this case is that issues pertaining to Act 94, 40 Pa. C.S.A. § 6124(c), must be decided by the [PID] in the first instance. In the Motion to Dismiss, this position was embodied in Defendants' argument that dismissal was required because Plaintiff failed to exhaust the procedures mandated by Act 94, including the requirement of ninety days advance written notice to the PID.

Defendants now ask this Court to recognize the jurisdiction and role of the PID

Courts developed the doctrine of primary jurisdiction to avoid conflicts between the courts and administrative agencies charged with particular regulatory duties. United States v. Western Pacific R.R. Co., 352 U.S. 59, 63 (1956). Primary jurisdiction comes into play when judicial enforcement of a claim requires the resolution of issues which, under the regulatory scheme, have been placed within the special competence of an administrative body. Id. at 64; see also Elkin v. Bell Telephone Co., 420 A.2d 371, 375 (Pa. 1980). In such a case, the court should suspend the case pending referral of such issues to the administrative body. Western Pacific R.R. Co., 352 U.S. at 64. No fixed formula exists for applying the doctrine of primary jurisdiction. In general, a court should refer a matter to an administrative agency for resolution if it appears that the matter involves technical or policy considerations that are beyond the court's ordinary competence and within the agency's particular field of expertise, or where there is the possibility of contradictory rulings from the agency and the court. See MCI Communications Corp. v. AT & T, 496 F.2d 214, 220 (3d Cir.1974); E.L.G. Enters Corp. v. Gulf Oil Co., 435 A.2d 1295, 1296-97 (Pa Super. 1981). However, as the Court of Appeals has stated, “[a]ccommodation of the judicial and administrative functions does not mean abdication of judicial responsibility.” MCI Telecommunications Corp. v. Teleconcepts, Inc., 71 F.3d 1086, 1104 (3d Cir. 1995), quoting Elkin, 420 A.2d at 376. “Courts

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under Act 94 by applying principles of primary jurisdiction to (a) refer issues concerning Act 94 to the PID for determination by the agency and (b) stay this case pending the agency’s determination.

If defendants are suggesting that they asked me to refrain from deciding their own motion to dismiss and to refer the issues involved to the PID, I find such a suggestion to be specious. In their original brief, defendants first argued that CHOP had failed to give the required notice of termination and requested as relief that the action be dismissed with prejudice. Alternatively, defendants asserted that if advance notice of termination were not required, I should dismiss the action with prejudice because plaintiff had failed to exhaust the administrative requirements of Act 94. There was no request that I refer the issue to the PID for its decision.

should not be too hasty in referring a matter to an agency, or to develop a dependence on the agencies whenever a controversy involves some issue falling arguably within the domain of the agency's 'expertise.'" Id.

Matters of statutory construction are particularly appropriate for judicial determination. See, e.g., Japan Whaling Ass'n v. American Cetacean Society, 478 U.S. 221, 230 (1986) ("one of the judiciary's roles is to interpret statutes"). The question at issue here –whether the statute's notice provision applies only to one party's termination of a contract or extends to the contract's natural expiration at the end of an agreed term– is clearly a matter of statutory construction. No complex or technical issues which fall within the PID's special expertise or experience are involved. Unlike the cases cited by defendants, the construction of the Act's notice provisions does not require the application of an administrative regulation to disputed facts. See, e.g., Ricci v. Chicago Mercantile Exchange, 409 U.S. 289, 305 (1973) (since issue before the Court "appears to pose issues of fact and questions about the scope, meaning, and significance of Exchange membership rules," referral to administrative agency is appropriate.); Teleconcepts, 71 F.3d at 1103-05 (Public Utility Commission can best determine company's compliance with its obligation to provide reasonable, efficient service where dispute centers around company's performance under its tariff and any technical deficiencies that may have existed in the dial tone generated by its equipment.); Sandoz Pharmaceuticals Corp. v. Richardson-Vicks, Inc., 902 F.2d 222, 230-31 (3d Cir. 1990) (whether ingredient in cough medicine is active or inactive under applicable federal regulations is matter for FDA.) Defendants admit that "[t]here are no factual disputes concerning the application of Act 94 to this case, or concerning the communications between CHOP and the PID and CHOP and defendants pertaining to 'expiration.'" Def.'s Mem., at 19.

There is no indication that the PID has adopted a different construction of the statute at variance with mine or even wishes to be heard on this matter. Moreover, the issue in this case is unlikely to be revisited since the 1996 Letter Agreement appears unique in that it lacks an evergreen clause and expires by its own terms. In any event, defendants have offered nothing to suggest that there is a risk of inconsistent rulings from the agency and the court.<sup>2</sup> Accordingly, I will not refer issues under Act 94 to the PID.

In the alternative, defendants move for certification of the orders denying the motion to dismiss. Under 28 U.S.C. § 1292(b), a district court may certify an interlocutory order for immediate appeal where that order (1) involves a controlling question of law, (2) offers grounds for a substantial difference of opinion, and (3) is of a nature that an immediate appeal would materially advance the ultimate termination of the litigation. 28 U.S.C. § 1292(b). However, even if the Court of Appeals were to disagree with my construction of the statute and hold that state law required notice of a contract's expiration at the conclusion of its express term, such a holding would not require dismissal. CHOP did in fact notify both IBC and the PID that the letter agreement had expired. Moreover, certification will not materially advance the ultimate termination of the litigation. Accordingly, I will not certify the Orders of March 22 and 23, 2000 for immediate appeal.

I continue to believe that the parties' differences will be best resolved at the conference table and not in the courtroom and urge them to continue their efforts to achieve such a resolution.

Three Orders follow.

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<sup>2</sup> Though defendants argue in a supplemental submission that a separate proceeding between IBC and Jefferson Health Systems, Inc. now before the PID creates a risk of inconsistent rulings, they are mistaken. The issue involved in that proceeding –whether Act 94 applies to IBC affiliates which are not hospital plan corporations– has not been decided by me.

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ORDER

AND NOW, this        day of April, 2000, upon consideration of defendants' motion to refer to the Pennsylvania Insurance Department issues under Act 94 and for a stay or, in the alternative, to certify the Orders denying the motion to dismiss pursuant to 28 U.S.C. § 1292(b), and plaintiff's response thereto, it is hereby ORDERED that the motion is DENIED.

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THOMAS N. O'NEILL, JR.,        J.