

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

TEMPLE UNIVERSITY HOSPITAL, INC., :	CIVIL ACTION
Plaintiff :	
:	
:	
v. :	
:	
GROUP HEALTH, INC., <i>et al</i> , :	
Defendants :	NO. 05-102

MEMORANDUM AND ORDER

Gene E.K. Pratter, J.

January 12, 2006

The third party claim at issue in the motion for Judgment on the Pleadings has been filed as part of a dispute initiated by Temple University Hospital (Temple). Temple is a large health system that is seeking to recover \$10,950,162.12, plus interest and costs, for the treatment of Fred Tremarcke from September 6, 2002 to November 26, 2003 and again from March 24, 2004 to April 28, 2004. (Temple Amended Complaint ¶¶ 18, 22, 28, 30).¹ Temple sued three health insurers or related companies, Oxford Health Insurance, Inc. (Oxford), Group Health, Inc. (GHI), and MultiPlan, Inc. (MultiPlan), that Temple claims are obligated to reimburse Temple for Mr. Tremarcke's treatment.

Oxford filed a third party claim against MultiPlan alleging breach of express and implied contract terms as well as unjust enrichment. MultiPlan then filed this Motion for Judgment on the Pleadings to which Oxford responded. MultiPlan argues that Oxford's third party claim should be dismissed because (1) Oxford failed to comply with the claims payment procedures in

¹ Although not specified in the pleadings, the medical treatment and services rendered to Mr. Tremarcke appear to relate primarily to an organ transplant. Trans. of Oral Argument at 44-45, Nov. 2, 2005.

the relevant contract and (2) Oxford failed to comply with the dispute resolution procedures in the relevant contract. Oxford responds by arguing that (1) it properly stated a claim for breach of express and implied terms of the relevant contract, (2) it has properly stated a claim for unjust enrichment, and (3) that the dispute resolution provision of the relevant contract does not preclude its claims.

At this early stage of litigation, MultiPlan has failed to show that it is entitled to judgment on the pleadings because there are factual disputes which preclude the Court from making the necessary legal determinations before the discovery process has run its course.

I. FACTUAL BACKGROUND

The following recitation of the facts is based on the allegations articulated in Oxford's third party complaint against MultiPlan. When considering a motion for judgment on the pleadings, the allegations of the third party claimant must be read in a light most favorable to Oxford as the nonmovant. See Mele v. Federal Reserve Bank of New York, 359 F.3d 251, 253 (3d Cir. 2004).

A. The Access Agreement

Oxford and MultiPlan entered into a "HMO Cost Savings Agreement" on September 1, 1992. Oxford's Crossclaim ¶ 4. Subsequently, Oxford and MultiPlan amended the HMO Cost Savings Agreement seven (7) times between September 1, 1992 and January 1, 2004 (collectively, as amended, the "Access Agreement"). Id. ¶ 5. Under the terms of the Access Agreement, MultiPlan promised to provide Oxford's group health plan participants ("Participants") with access to MultiPlan's network of healthcare providers ("Providers") at discounted rates negotiated by MultiPlan. Id. ¶ 6. Pursuant to the Access Agreement, when

Oxford Participants received healthcare services from MultiPlan's Providers, the Providers billed Oxford at discounted rates negotiated by MultiPlan. Id. ¶ 7. In exchange for granting Oxford access to MultiPlan's Providers subject to negotiated rates, Oxford was obligated to pay a fee to MultiPlan for its services. The fee was based on a percentage of the costs that Oxford saved by using MultiPlan's Providers. Id. ¶ 8. The term "savings" is defined under the Access Agreement as "the difference between the amount billed by the Provider before any [MultiPlan] discounts or [MultiPlan] negotiation and of the amount actually paid by the Client [i.e., Oxford]." Id. ¶ 9.

B. Temple's Claims

Temple claims that it is one of MultiPlan's Providers and, as such, provided medical treatment and services to Fred Tremarcke during the period from September 6, 2002 to November 26, 2003, and that the value of those treatments and services totaled \$10,458,016.58. Id. ¶¶ 10-11. Temple also claims that it provided medical treatment and services to Mr. Tremarcke during the period from March 24, 2004 to April 28, 2004, and that the value of the treatment and services for that time period amounted to \$492,145.54. Id. ¶ 12. Temple further claims that Oxford is obligated to pay for the billed services that Temple allegedly rendered to Mr. Tremarcke during the periods he was treated by Temple while Mr. Tremarcke's group was covered by Oxford, namely March 1, 2003 through April 28, 2004. Temple asserts that Oxford's liability emanates from the Access Agreement between Oxford and MultiPlan. Id. ¶ 13. Oxford alleges that the amounts that Temple billed for Mr. Tremarcke's treatment and the services to him are inflated, excessive, unreasonable, and not at negotiated rates. Id. ¶ 14.

C. MultiPlan's Alleged Responsibilities Under the Access Agreement

Oxford alleges that if it must pay Temple's rates under the Access Agreement, it will be

paying substantially more than is appropriate and reasonable. Id. ¶ 15. Oxford claims that MultiPlan did not comply with the Access Agreement because it failed to obtain reasonable and competitive rates from Temple. Id. ¶ 16. Although Temple claims that MultiPlan agreed to a 10% reduction to Temple’s customary charges, and waived any rights to audit the Temple bills based on the provisions of the “Discount Agreement” between Temple and MultiPlan, id. ¶ 17, Oxford claims this was an illusory benefit, inasmuch as most audits reveal approximately 10% in overcharges. Id. Additionally, Oxford claims that MultiPlan was not authorized to waive Oxford’s audit rights. Id. Finally, Oxford argues that MultiPlan’s fee should be commensurate with the amount, if any, that the Court determines is ultimately due from Oxford to Temple for fair and reasonable charges for the treatment and services Temple rendered to Mr. Tremarcke, rather than computed using Temple’s billed charges. Id. ¶ 18.

D. Oxford’s Third Party Claims

Oxford alleges against MultiPlan two counts of breach contract claiming that MultiPlan breached the Access Agreement because (1) it failed to obtain reasonable and competitive rates with Temple for the services provided to Mr. Tremarcke (Count I) and because (2) the amounts that Temple billed and that Oxford paid for the treatment and services that it provided to Oxford’s Participants in the past were inflated, excessive, unreasonable, and not at negotiated rates (Count II). Id. ¶¶ 16, 20-21.

Oxford also claims that to the extent that MultiPlan’s past fees have been based on a percentage of Temple’s inflated, excessive and unreasonable rates, MultiPlan has been unjustly enriched at Oxford’s expense and that MultiPlan will also be unjustly enriched at Oxford’s expense if Oxford is required to pay a fee to MultiPlan based on Temple’s billed charges for the

treatment and services Temple allegedly rendered to Mr. Tremarcke. (Count III). Id. ¶¶ 25-27. Finally, Oxford alleges that MultiPlan has breached the implied covenant of good faith and fair dealing by failing to negotiate discounted rates that are reasonable and competitive with respect to the treatment and services rendered by Temple to Mr. Tremarcke, as well as Oxford’s Participants in the past (Count IV). Id. ¶¶ 30-31.

II. DISCUSSION

A. Legal Standard

Rule 12(c) of the Federal Rules of Civil Procedure allows a party to move for judgment on the pleadings “[a]fter the pleadings are closed but within such time as not to delay trial. . . .” Under Rule 12(c), “judgment will not be granted unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law.” See Jablonski v. Pan American World Airways, Inc., 863 F.2d 289, 290 (3d Cir. 1988) (citation omitted). As with a motion to dismiss under Rule 12(b)(6), the “Court ‘view[s] the facts alleged in the pleadings and the inferences to be drawn from those facts in the light most favorable to the plaintiff [(here, Oxford)].’” Mele v. Federal Reserve Bank of New York, 359 F.3d 251, 253 (3d Cir. 2004) (quoting Leamer v. Fauver, 288 F.3d 532, 535 (3d Cir. 2002)).

Oxford and MultiPlan agree that New York law controls the interpretation of the Access Agreement.² Under New York law, MultiPlan states that the proper analysis must be contained within the “four corners” of the contract at issue:

² Section 14 of the HMO Savings Agreement between the parties states “this Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of New York.”

[W]hen a contract is clear in and of itself, circumstances extrinsic to the document may not be considered and that where the intentions of the parties may be gathered from the four corners of the instrument, issues of contract interpretation are questions of law. As a result, such issues are properly disposed of through a motion for judgment on the pleadings.

State Bank of India v. Walter E. Heller & Co., 655 F. Supp. 326, 326-327 (S.D.N.Y. 1987)

(citing Bethlehem Steel Co. v. Turner Construction Co., 141 N.E.2d 590, 593 (N.Y. 1957); 5

Wright & Miller, Federal Practice and Procedure § 1368 (1969)).

B. Breach of Express and Implied Terms of the Contract

MultiPlan argues that once Oxford has opted for the payment procedure established by the Access Agreement, Oxford is not entitled to any additional discount. MultiPlan argues that Section 2 of the HMO Cost Savings Agreement portion of the Access Agreement establishes that MultiPlan had no contractual obligation to negotiate any additional discount to the rates with Temple beyond the 10% discount established in the “Discount Agreement” between Temple and MultiPlan. Section 2 of the HMO Cost Savings Agreement portion of the Access Agreement states:

At CLIENT’S request NETWORK [i.e., MultiPlan] will attempt to negotiate reduction of any specific bills rendered by a Provider in instances where the CLIENT believes the charges may be excessive or improper and where NETWORK believes negotiations may result in further reduction.

Based on this section of the Access Agreement, MultiPlan argues that Oxford has the affirmative duty and obligation to request a renegotiation, otherwise the 10% discount will remain in place. MultiPlan claims that Oxford has failed to utilize this process.

Oxford responds by first agreeing that the express terms of the Access Agreement required MultiPlan to provide Oxford with a discount on services rendered by MultiPlan’s

provider. But by failing to provide Oxford with a true discount, Oxford contends that MultiPlan breached the express terms of the Access Agreement. Oxford claims that MultiPlan's failure to obtain reasonable and competitive rates from Temple rendered any discount illusory. Oxford further claims that this alleged failure on the part of MultiPlan to acquire an actual discount constituted a breach of the implied covenant of good faith and fair dealing.

Oxford contends that MultiPlan's obligation to negotiate terms relating to the underlying rate was an implicit part of its bargain with MultiPlan. Oxford claims that the Access Agreement establishes that Oxford entered into the Agreement in order to lower the cost of providing health services. Indeed, the Preamble of the Access Agreement provides that "[Oxford] is desirous of controlling the costs incurred by it when its HMO members are entitled to use out-of-plan hospitals health facilities, health services and other providers. . . ." The Preamble of the Agreement also states that "[MultiPlan] has contracted with Providers . . . for discount rates" and that "[Oxford] is desirous of obtaining [MultiPlan's] discounted rates . . . to control its costs. . . ." Thus, Oxford argues that the effort to save costs through only fixed or static percentage discounts, without some limitation on increases on the charges underlying those discounts, can easily be defeated and rendered meaningless if the provider artificially and excessively increases those underlying charges. Oxford argues that this is what Temple has done here, with the result of undermining the purpose of the Access Agreement.

Oxford additionally alleges that MultiPlan breached its express and implied contractual obligations by entering into a contract with Temple that purported to waive Oxford's audit rights. The Discount Agreement that MultiPlan entered with Temple states that the "Plan agrees to waive any audit of billed charges." Oxford argues that MultiPlan never disclosed to Oxford that

it would be waiving such a valuable right in contracts with its Providers. Oxford emphasizes that the Access Agreement specifically states that neither party is authorized to act as the other party's agent. HMO Cost Savings Agreement ¶ 18.

Rule 8 of the Federal Rules of Civil Procedure “requires only a ‘short and plain statement’ of the case when pleading a breach of contract claim.” Power Travel Int'l, Inc. v. Am. Airlines, Inc. 257 F. Supp. 2d 701, 703 (S.D.N.Y. 2003). Further, under New York law, a viable claim for breach of contract “need only allege (1) the existence of an agreement, (2) adequate performance of the contract by the plaintiff, (3) breach of contract by the defendants, and (4) damages.” Eternity Global Master Fund, Ltd. v. Morgan Guar. Trust Co., 375 F.3d 168, 177 (2d Cir. 2004) (citing Harsco Corp. v. Segui, 91 F.3d 337, 348 (2d Cir. 1996)). Here, the allegations when taken as true do not entitle MultiPlan to a judgment as a matter of law because if Oxford did in fact fail to receive the discount due to it under the Access Agreement, as alleged, it could prevail in a breach of contract claim.

Additionally, “[u]nder New York Law, a covenant of good faith and fair dealing is implied in all contracts.” 1-10 Industry Assocs., LLC v. Trim Corp. of America, 747 N.Y.S.2d 29, 30 (N.Y. App. Div. 2002).

[The covenant] encompasses ‘any promises which a reasonable person in the position of the promisee would be justified in understanding were included’ in the agreement, and prohibits either party from doing ‘anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract.’

Id. (quoting Dalton v. Educational Testing Serv., 663 N.E.2d 289, 291 (N.Y. 1995)). Again, concerning the claim for breach of the implied covenant of good faith and fair dealing, it would be premature for this Court to determine now whether or not MultiPlan performed in accordance

with the justified expectations of Oxford. Therefore, viewing all reasonable inferences in favor of Oxford, the Court concludes that Oxford has succeeded at least in pleading claims against MultiPlan for breach of express and implied terms of the Access Agreement. The nature of the discount provided by MultiPlan remains a genuine issue of material fact and forecloses the possibility of judgment on the pleadings at this stage as well. Thus, MultiPlan is not entitled to judgment as a matter of law.

C. Unjust Enrichment

Oxford has also asserted a claim for unjust enrichment against MultiPlan in the event that the Court concludes that the Access Agreement between MultiPlan and Oxford was, in whole or in part, unenforceable or void. Oxford alleges that justice would not be served if MultiPlan were allowed to retain fees for a service it failed to provide. MultiPlan does not address this Count in any detail in its Motion for Judgment on the Pleadings.

Rule 8(e)(2) of the Federal Rules of Civil Procedure provides that: “A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. . . . A party may also state as many separate claims or defenses as the party has, regardless of consistency” As the Third Circuit Court of Appeals has held: “This Rule permits inconsistency in both legal and factual allegations.” Independent Enters. v. Pittsburgh Water & Sewer Auth., 103 F.3d 1165, 1175 (3d Cir. 1997).

Thus, Oxford may proceed with its unjust enrichment claim against MultiPlan.

D. Dispute Resolution Provisions

MultiPlan also alleges that the Dispute Resolution provision of the Sixth Amendment to the Access Agreement for Access to Organ Transplant Network sets out the proper mechanism

for pursuing claims such as Oxford's claims here. The Dispute Resolution Provision states:

In the event of a dispute between Client and an MPI Provider regarding a claim or payment for covered services under this Agreement, Client shall notify MPI, in writing, of the dispute within sixty days of receipt of the Clean Claim. Upon request and at no charge, Client shall provide information reasonably necessary for MPI to facilitate resolution of any disputes that arise between Client and an MPI Provider, such as a copy of its benefits and/or an explanation of Client's utilization programs, and such utilization and/or claims data as MPI may reasonably request. MPI will make its best efforts to assist Client in resolving the dispute with the MPI Provider. If Client fails to notify MPI of a dispute consistent with this provision, Client may not otherwise dispute the claim(s) at issue.

Sixth Amendment to the Access Agreement for Access to Organ Transplant Network, ¶

11.

MultiPlan asserts that Oxford failed to comply with this dispute resolution provision. Further, MultiPlan argues that the provision is clear and unambiguous and that Oxford's failure to comply with the provision, even if Temple was charging excessive rates, forecloses any contractual liability on the part of MultiPlan.

First, Oxford responds by contending that MultiPlan breached the contract at its inception by failing to provide the discounted rates it promised to Oxford and later by exceeding its authority when it potentially waived Oxford's audit rights. Oxford asserts that MultiPlan cannot rely on the terms of a contract that it already breached to defend against such a claim for breach, citing Hartzell v. Burdick, 398 N.Y.S.2d 649, 650 (N.Y. City Ct. 1977) ("A breach of contract by one party relieves the other from obligations under it and renders the covenants unenforceable by the one who has breached it.") (citations omitted); DeCapua v. Dine-a-Mate, Inc., 744 N.Y.S.2d 417, 420 (N.Y. App. Div. 2001) ("The plaintiff was not entitled to enforce the restrictive covenant in the contract since he breached the contract first by failing to make royalty

payments.”).

Second, Oxford responds by arguing that the dispute resolution provision is unenforceable under New York law because it provides Oxford with an unreasonably short time in which to bring suit. Oxford cites Novak & Co., Inc. v. New York City Hous. Auth., 480 N.Y.S.2d 403, 406 (N.Y. Spec. Term 1984) modified on other grounds, 485 N.Y.S.2d 68 (N.Y. App. Div. 1985), appeal dismissed, 65 N.Y.2d 637 (N.Y. 1985), and Kassner & Co. v. City of New York, 389 N.E.2d 99, 103 (N.Y. 1979) (“an agreement which modifies the Statute of Limitations by specifying a shorter, but reasonable, period within which to commence an action is enforceable”) in support of its position. Oxford claims that it cannot engage in any meaningful non-judicial dispute resolution within the required time frame because it is unable to provide MultiPlan with the details of any dispute until it completes discovery and analyzes Temple’s bills and records.

Third, Oxford argues that the provision explicitly only applies to disputes “for covered services under this Agreement.” Oxford claims there is a dispute about whether Mr. Tremarcke is even eligible for coverage, asserting that his eligibility to receive benefits under his union-sponsored ERISA health plan is the subject of a dispositive motion in another action now pending in the United States District Court for the Eastern District of New York. Oxford contends that if Mr. Tremarcke is not covered by Oxford, the Access Agreement and therefore the dispute resolution provision would not apply. Thus, Oxford argues that until Mr. Tremarcke’s eligibility is resolved, this provision cannot be a bar to Oxford disputing Temple’s bill for services. Similarly, Oxford argues that it has not been established that the Access Agreement applies to Temple’s bill for services it allegedly rendered to Mr. Tremarcke. Oxford

claims that Oxford did not invoke the Access Agreement with respect to the services Mr. Tremarcke received at Temple in 2002 and 2003. Therefore, Oxford argues that unless the Court determines that the Access Agreement applies to this Temple bill, the dispute resolution provision can not be a basis for dismissal of Counts I, III, or IV asserted against MultiPlan related to the Temple Tremarcke bill.

Finally, Oxford argues that the dispute resolution provision only applies to disputes between Oxford and MultiPlan Providers, and thus that provision does not apply to direct claims by Oxford against MultiPlan for failing to deliver the promised discount and for waiving Oxford's audit rights.

When all reasonable inferences are drawn in Oxford's favor, its claims should not be precluded by failure to conform to the dispute resolution procedure in the Access Agreement because a prior breach of the contract may nullify the procedure, the procedure may be unreasonable in the context of this case, and the procedure may not even apply to this dispute. Therefore, because each of these issues involve factual questions which have yet to be answered, this Court will not pass judgment on pleadings.

III. CONCLUSION

For the reasons discussed above, the Court denies MultiPlan's Motion for Judgment on the Pleadings. An appropriate Order consistent with this Memorandum follows.

BY THE COURT:

/S/_____

GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE

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

TEMPLE UNIVERSITY HOSPITAL, INC.,	:	CIVIL ACTION
Plaintiff	:	
	:	
	:	
v.	:	
	:	
GROUP HEALTH, INC., <i>et al</i> ,	:	
Defendants	:	NO. 05-102

ORDER

Gene E.K. Pratter, J.

January 12, 2006

AND NOW, this 12th day of January, 2006, upon consideration of MultiPlan, Inc.'s Motion for Judgment on the Pleadings (Docket Nos. 48, 49), and the response thereto (Docket No. 57), it is hereby ORDERED that the Motion for Judgment on the Pleadings is DENIED. MultiPlan Inc. shall file and serve its answer to Oxford's third party complaint within twenty (20) days of the date of this Order.

BY THE COURT:

/S/ _____
GENE E.K. PRATTER
UNITED STATES DISTRICT JUDGE