

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

PRINCETON INSURANCE COMPANY,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	NO. 98-4985
v.	:	
	:	
ANTHONY W. KOSOY, D.C. and	:	
JOHN SELTZER,	:	
	:	
Defendants.	:	

MEMORANDUM

BUCKWALTER, J.

February 8, 1999

Plaintiff, Princeton Insurance Company (“Princeton”), seeks a declaration that it does not have a duty to indemnify its insured, Anthony W. Kosoy, D.C. (“Dr. Kosoy”), who is a defendant in an underlying action pending in the Philadelphia Court of Common Pleas. See John Seltzer v. Anthony W. Kosoy, D.C., No. 2009 (Phila. C.C.P. May Term 1994). Princeton has moved for a judgment on the pleadings, pursuant to Federal Rule of Civil Procedure 12(c). For the reasons stated below, Princeton’s motion will be **GRANTED**.

I. Background

In October, 1998, Dr. Kosoy, a chiropractor, began treating Seltzer. After treatment was stopped, Dr. Kosoy continued to bill Liberty Mutual Insurance Company over a two-year period of time for treatment which he allegedly never performed. See Seltzer Am. Compl. ¶ 4 (attached as Exhibit A to Def. Mem.). On or about May 20, 1997, Seltzer filed a

complaint against Dr. Kosoy alleging claims sounding in negligence, fraud and breach of contract. The Seltzer complaint alleges that, as a result of Dr. Kosoy's improper billing, Seltzer was denied worker's compensation benefits. See id. at ¶¶ 7, 13. In December 1997, Dr. Kosoy filed a petition under Chapter 7 of the United States Bankruptcy Code, 11 U.S.C. § 701 et seq., and was discharged from all pre-petition debts. Prior to Dr. Kosoy's discharge, Seltzer had stipulated that he would only pursue claims against Dr. Kosoy that were covered under the professional liability policy of Dr. Kosoy with Princeton. See Def. Mem. (Exhibit D thereto). At all relevant times, Princeton provided insurance for Dr. Kosoy under a policy which covered Dr. Kosoy for individual, partnership, association or corporation professional liability.

In this action, Princeton asks this Court for a declaration that it has no duty to indemnify Dr. Kosoy with respect to the Seltzer complaint. See Pl. Reply Mem. at 6.

II. Standard of Review

In deciding a motion for judgment on the pleadings pursuant to Federal Rule Civil Procedure 12(c), a district court must view the facts and inferences to be drawn from the pleadings in the light most favorable to the non-moving party. See Janney Montgomery Scott, Inc. v. Shepard Niles, Inc., 11 F.3d 399, 406 (3d Cir. 1993). The court may grant the motion only if no material issues of fact remain to be resolved, and the movant is entitled to judgment as a matter of law. See Jablonski v. Pan Am. World Airways, Inc., 863 F.2d 289, 290-91 (3d Cir. 1988). To survive the motion, the plaintiff must set forth facts that state a claim as a matter of law. See Sterling v. Southeastern Pa. Transp. Auth., 897 F. Supp. 893, 895 (E.D. Pa. 1995).

III. Discussion

Princeton advances two reasons for why it is entitled to judgment on the pleadings. First, it contends that the insurance policy does not afford coverage for claims arising solely out of the billing practices of Dr. Kosoy's chiropractic business. Second, Princeton argues that, even assuming that there is coverage for billing errors under the terms of the policy, such claims are subject to a specific exclusion for any liability Dr. Kosoy incurred as a proprietor of a business. Princeton's policy provides, in relevant part:

Coverage M - Individual Professional Liability.

We will pay all amounts up to the limit of liability which you become legally obligated to pay as a result of injury to which this insurance applies. The injury must be caused by a "medical incident" arising out of your supplying or failure to supply professional services.

* * *

Coverage N - Partnership, Association or Corporation Professional Liability.

We will pay all amounts up to the limit of the liability which you become legally obligated to pay as a result of injury to which this insurance applies. The injury must be caused by a "medical incident" arising out of the supplying or failure to supply professional services by you or anyone for whose professional acts or whose failure to act you are legally responsible.

* * *

Exclusions

This insurance does not apply for:

* * *

(b) any liability you may have as a proprietor, hospital administrator, officer, stockholder, or member of the board of directors, trustees, or governors, of any:

- (1) hospital, nursing home, or sanitarium;
- (2) clinic with bed and board facilities;
- (3) laboratory or other business.

* * *

VII. ADDITIONAL DEFINITIONS

When used in reference to this Insurance (including endorsements forming a part of the policy): “medical incident” means any act or failure to act:

(a) Individual Professional Liability -

(1) in the furnishing of the professional medical or dental services by you, any employee of yours, or any person acting under your personal direction, control or supervision, or

(2) in your service as a member of a formal accreditation, standards of review or similar professional board or committee.

Any such act or failure to act, together with all related acts or failures to act in the furnishing of such services to any one person shall be considered one “medical incident.”

Professional Liability Coverage Form (attached as Exhibit A to Pl. Mem.).

Specifically, Princeton maintains that Dr. Kosoy’s billing services are not “professional services” and that a claim for false billing is not a “medical incident” covered by its policy. Seltzer, however, argues that the term “professional services” is ambiguous and that the intended scope of the term goes beyond the actual treatment of patients to include coverage for billing and clerical work.

In interpreting language in an insurance policy, it is well settled that, where a provision of a policy is ambiguous, the language is to be construed in favor of the insured. However, where the language is clear and unambiguous, a court is required to give effect to that language. See, e.g., Aetna Life and Casualty v. Federal Insurance Co., No. CIV.A. 96-5995, 1997 WL 746189, at *3 (E.D. Pa. November 26, 1997). A court may not “rewrite” an insurance contract, or construe clear and unambiguous language to mean other than what it says. See id. Moreover, under Pennsylvania law, an objective standard is applied to determine the interpretation of policy coverage language. See Dibble v. Sec. of Am. Life Ins. Co., 590 A.2d 352, 354 (Pa. Super. 1991). The applicable test is what a reasonable person in the position of an

insured would understand the terms to provide. See, e.g., Lucker Mfg. v. Home Ins. Co., 23 F.3d 808, 814 (3d Cir. 1994).

The Seltzer complaint alleges claims for negligence, fraud and breach of contract arising solely out of the billing practices of Dr. Kosoy's chiropractic business. There is no claim that conceivably could be deemed to be a "medical incident," as that term is defined in the policy. Coverage provisions M and N of the policy state that the injuries covered by the policy must be caused by a "medical incident" arising out of the insured's "supplying or failure to supply professional services." In the insurance context, the Third Circuit has defined "professional services" as an act or service "arising out of a vocation, calling, occupation or employment involving specialized knowledge, labor, or skill . . . [T]he relevant consideration is not the title or character of the party performing the act, but the act itself." Visiting Nurse Ass'n. v. St. Paul Fire & Marine Ins. Co., 65 F.3d 1097, 1101 (3d Cir. 1995). The policy itself defines "medical incident" as any act or failure to act in the furnishing of professional medical services. This language clearly and unambiguously limits coverage to the provision of medical treatment or the failure to provide such treatment. Accordingly, the Court finds that Dr. Kosoy's billing practices do not fall within the definition of professional medical services as required by the policy and thus, is not covered under the Princeton policy.

Alternatively, the Court agrees that the exclusion section of the policy operates to preclude Dr. Kosoy from making a claim under the policy for any liability resulting from billing errors. Under Pennsylvania law, exclusions from coverage contained in an insurance policy will be effective against an insured if they are clearly worded and conspicuously displayed, irrespective of whether the insured read the limitations or understood their import. See, e.g.,

Pacific Indemnity Co. v. Linn, 766 F.2d 754, 761 (3d Cir. 1985)(citing Standard Venetian Blind Co. v. American Empire Ins. Co., 469 A.2d 563, 567 (Pa. 1983)). The policy specifically excludes any liability which Dr. Kosoy had as a proprietor of a business. Since billing is properly construed as a function of a proprietor and relates to Dr. Kosoy's operation of his business, it does not involve any rendering of professional medical services. Accordingly, based on this Court's review of the policy, it is clear that there is no coverage under the Princeton policy with respect to Seltzer's claims against Dr. Kosoy.

VII. Conclusion

For the foregoing reasons, Plaintiff's motion is **GRANTED**. An appropriate order follows.

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ANTHONY W. KOSOY, D.C. and	:	
JOHN SELTZER,	:	
	:	
Defendants.	:	

ORDER

AND NOW this 8th day of February, 1999, upon consideration of Plaintiff's motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) (Docket No. 7), Defendant Seltzer's response (Docket No. 10), and Plaintiff's reply thereto (Docket No. 11), it is hereby **ORDERED** that Plaintiff's motion is **GRANTED**. Judgment is entered in favor of Plaintiff, Princeton Insurance Company, and against Defendants, John Seltzer and Anthony W. Kosoy, D.C.

Based on the foregoing review of the applicable policy, the following is declared: Plaintiff, Princeton Insurance Company, has no duty to indemnify its insured, Anthony W. Kosoy, D.C., in the underlying action, John Seltzer v. Anthony W. Kosoy, D.C., No. 2009 (Phila. C.C.P. May Term 1994). The Clerk shall mark this case **CLOSED**.

BY THE COURT:

RONALD L. BUCKWALTER, J.