

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

KATHLEEN GORSKI DOWD,
ADMINISTRATRIX OF THE ESTATE
OF JAMES DOWD, AND KATHLEEN
DOWD, IN HER OWN RIGHT, ET AL.

Plaintiffs,

v.

RYAN WALSH,

Defendant.

J&J SNACK FOODS CORP. AND
J&J SNACK FOODS CORP. HEALTH
AND WELFARE PLAN,

Plaintiffs,

v.

CAROLE KAFFRISSEN, ESQ.,
ET AL.,

Defendants.

v.

BLUE CROSS AND BLUE SHIELD
OF NEW JERSEY, ET AL.,

Third Party Defendants

CIVIL ACTION

NO. 98-5743

MEMORANDUM

R.F. KELLY, J.

AUGUST , 1999

Presently before the court is Third-Party Defendants Blue Cross Blue Shield of New Jersey, Horizon Blue Cross Blue Shield of New Jersey and John Teijido, Esquire's (collectively the "Third-Party Defendants") Motion to Dismiss the Third-Party

Complaint in the above-captioned case. Upon consideration of said Motion, and the response of the Third Party Plaintiffs Carole F. Kafrissen, Law Offices of Carole F. Kafrissen, P.C., et al., the Motion will be granted and the matter will be dismissed with prejudice.

I. BACKGROUND

J&J Snack Foods Corporation ("J&J Snacks") is a New Jersey corporation that self-insures its employees under its Health and Welfare Plan (the "Plan"), a plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). J&J Snacks employed James Dowd as of the date of his death and during said employment, he was covered under the Plan. On June 23, 1995, James Dowd was involved in an automobile accident, and on June 26, 1995, he died from the injuries he sustained. As a result of his hospitalization, James Dowd incurred approximately \$83,000 in hospital bills for the injuries he received in the accident. The Plan advanced \$83,000 in hospital expenses for the benefit of Dowd and his dependents.

James Dowd's estate instituted a wrongful death action and a survivorship action against the driver of the vehicle that caused the automobile accident. The case was heard in this Court, and Dowd's estate and his wife were represented in the litigation by Carole F. Kafrissen, Esq. It was J&J Snacks' understanding that the Plan was entitled to a refund of the

benefits from the proceeds of any recovery realized from the underlying lawsuit.¹ The lawsuit was ultimately settled for \$975,000. The terms of the settlement allocated \$900,000 to the wrongful death claim and \$75,000 to the survivorship claim.

In this action, J&J Snacks and the Plan claim that Kafrissen, Dowd's Estate, Dowd's wife and other beneficiaries of the Dowd Estate are liable to J&J Snacks and the Plan for the \$83,000 in hospital expenses that were advanced for Dowd's medical expenses. These parties further allege that the allocation of the \$975,000 settlement proceeds was unreasonable, arbitrary, capricious, and/or fraudulent; that the allocation of \$75,000 to the survivorship claim was unreasonably low; and the allocation of the \$900,000 was unreasonably high. It is J&J Snacks' belief that the settlement was intentionally allocated in that manner so to defeat J&J Snacks' and the Plan's right to recover the \$83,000 advanced for Dowd's medical expenses.

Third-Party Plaintiffs have filed a Third-Party Complaint against Third-Party Defendants, asserting that the Third-Party Defendants had a duty to notify Third-Party Plaintiffs that there was an \$83,000 claim asserted by J&J Snacks and/or the Plan. Third-Party Plaintiffs acknowledge that a letter was sent to Kafrissen by Teijido, an in-house attorney at

¹ Third-Party Defendants Blue Cross is the current claims administrator of the Plan, while John Teijido, Esq. is Associate General Counsel of Horizon Blue Cross Blue Shield of New Jersey.

Blue Cross. The letter is attached as an exhibit to the Third-Party Complaint and it states that Blue Cross and J&J Snacks had a subrogation lien against any proceeds from the wrongful death and survivorship suit.²

Currently before the Court is Third-Party Defendants' Motion to Dismiss the Third-Party Complaint. The Third-Party Plaintiffs filed their Complaint, asserting that Third-Party Defendants breached a duty to them, in that the letters sent did not inform Kafrissen that J&J Snacks or Blue Cross was asserting "an ERISA claim or any other claim cognizable under Pennsylvania law." Thus, the Third-Party Complaint pleads a cause of action for negligence. For the reasons set forth below, Third-Party Defendants' Motion to Dismiss will be granted.

II. STANDARD

A motion to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(6), tests the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A court must determine whether the party making the claim would be entitled to

² The letter is addressed to Kafrissen and states:

"On behalf of Blue Cross and Blue Shield of New Jersey, Inc., and J&J Snack Foods, I am writing to apprise you of said parties' subrogation lien which they seek to assert in any third party action stemming from Mr. Dowd's auto accident. . . . Accordingly, this letter should serve as formal notice that BCBSNJ, on behalf of J & J Snack Foods, will be asserting a subrogation lien in the amount of roughly \$83,000, representing payments made on behalf of J & J Snack Foods to various medical providers during all relevant times."

relief under any set of facts that could be established in support of his or her claim. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984)(citing Conley, 355 U.S. at 45-46); see also Wisniewski v. Johns-Manville Corp., 759 F.2d 271, 273 (3d Cir. 1985). In considering a Motion to Dismiss, all allegations in the complaint must be accepted as true and viewed in the light most favorable to the non-moving party. Rocks v. City of Phila., 868 F.2d 644, 645 (3d Cir. 1989)(citations omitted).

III. DISCUSSION

Third-Party Defendants claim that the within action should be dismissed for three reasons. First, they assert that there is "no legal support for the allegation that there was any duty to inform in the circumstances alleged." Second, even if an obligation did exist, the letter that was sent did, in fact, advise Kafrissen that the Plan would be asserting a claim to recover the benefits advanced. Third, assuming a duty existed, the Third-Party Complaint does not allege that any such failure to inform was material, or that Kafrissen detrimentally relied on the omission or that any injury was caused by the omission. This Court will not address all three of these assertions, however, for the simple reason that it is clear that sufficient notice was served upon Kafrissen. For the reasons set forth below, the Third-Amended Complaint fails to state a claim against Third-Party Defendants and therefore, should be dismissed.

Third-Party Defendants contend that Blue Cross, as claims administrator for the Plan, and Teijido, as the attorney for Blue Cross, had no duty to inform Kafrissen and her client of the possibility of "cognizable claims." However, this contention notwithstanding, it is this Court's firm belief that even if a duty exists, the Third-Party Defendants were not in breach of that duty, for the letter sent to Kafrissen was nothing short of sufficient notice. As Third-Party Defendants correctly assert,

"[f]rom the face of the complaint, it is apparent that the obligation to determine what claims were 'cognizable' was Ms. Kafrissen's. She was the lawyer who undertook to represent the Dowd estate. . . . There is simply no legal basis to shift that obligation. . . . To the extent that there was a breach of any duty, then, the breach was Ms. Kafrissen's. . . ."

Upon reviewing the letter sent to Kafrissen, this Court is satisfied that such notice was sufficient.

Third-Party Plaintiffs do no more than respond by making general assertions while citing only to the wording of the Third-Party Complaint. They fail to cite to any relevant case law supporting the notion that a duty exists, while failing to support the frivolous argument that sufficient notice was not served upon them.

Therefore, because Third-Party Defendants sufficiently served notice of the subrogation lien upon Third-Party Plaintiffs, the Third-Party Complaint fails to state a claim upon which relief can be granted and will be dismissed pursuant

to Fed.R.Civ.P. 12(b)(6).

An appropriate Order follows.

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CAROLE KAFFRISSEN, ESQ.,	:
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BLUE CROSS AND BLUE SHIELD	:
OF NEW JERSEY, ET AL.,	:
	:
Third Party Defendants	:
_____	:

ORDER

AND NOW, on this ____ day of August, 1999, upon consideration of the Third-Party Defendants Blue Cross Blue Shield of New Jersey, Horizon Blue Cross Blue Shield of New Jersey, and John Teijido, Esquire's Motion to Dismiss Third-Party Complaint, and Third-Party Plaintiffs' response thereto, it is hereby ORDERED and DECREED that said Motion is GRANTED. It is further ORDERED and DECREED that Third-Party Plaintiffs' Third-

Party Complaint is hereby DISMISSED with prejudice.

BY THE COURT:

Robert F. Kelly, J.