

96CV05924-LSD-MO

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MITCHELL PEARCE, NICOLAS ERRICO,
AND WILLIAM GRUBESSI,

Plaintiffs,

CV 96-5924 (RJD)

-against-

MEMORANDUM AND ORDER

GENERAL HEALTH INC. AND
SEYMOUR FRANK,

Defendants.

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DEARIE, District Judge.

Having reviewed the parties' submissions on the defendants' motion for summary judgment, it is not apparent to the Court that it continues to have jurisdiction over the plaintiffs' remaining claims for breach of contract.

Plaintiffs, three podiatrists, originally brought suit against General Health Inc., ("GHI") in New York State court, alleging that GHI : 1) had wrongfully denied payment on claims for treatments provided to persons insured by GHI; 2) had breached its agreements with the individual podiatrists (the "Provider Agreement") by wrongfully terminating the doctors as participating providers; and 3) had conspired with Mr. Frank to

deny bona-fide claims to authorized providers.

On December 5, 1996, the defendants filed a notice of removal in this Court. The notice referenced the plaintiffs' first claim for non-payment, and stated that "the underlying insurance plans affected by the allegations include . . . Employee Welfare Benefit Plans as defined by 29 U.S.C. §1002(1)." The defendants also noted that some of the unpaid claims "involved benefits provided pursuant to the Federal Employees Health Benefits Plan." The defendants invoked this Court's original jurisdiction pursuant to ERISA and 5 C.F.R. §890.107.

On May 22, 1997, plaintiffs filed an amended complaint and added a fourth cause of action: that GHI's termination of plaintiffs breached the implied covenant of good faith and fair dealing. On April 15, 1998, the parties stipulated that the first and third causes of action were discontinued. Thus, as of April, the plaintiffs' two remaining claims concerned the termination of the contract between GHI and the plaintiff health providers.

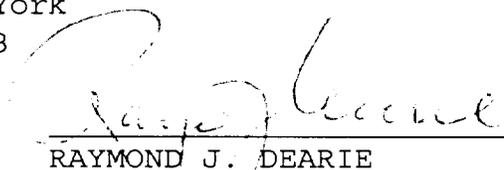
There is some authority that health providers, if assigned the rights of their patients, may have standing to sue to recover benefits due under an ERISA-qualified plan. See *Protocare of Metropolitan N.Y., Inc. v. Mutual Assoc. Administrators, Inc.*,

866 F. Supp 757, 761 (1994); The Renfrew Center v. Blue Cross and Blue Shield of Central New York, Inc., 1997 WL 204309 (N.D.N.Y); Clinical Partners, Inc. v. Guardian Life Insurance Co. of America, 1996 WL 294361 (E.D.N.Y.).

However, the plaintiffs' claims regarding non-payment have been discontinued. It is not apparent to the Court why the breach of contract claims which relate solely to a contract between the insurer and the provider invoke federal question jurisdiction. The parties are directed to submit letter briefs on this issue by October 26, 1998. The defendants' motion for summary judgment is deemed withdrawn with leave to renew.

SO ORDERED.

Dated: Brooklyn, New York
October 9, 1998



RAYMOND J. DEARIE
United States District Judge