IP 00-0695-C B/S Vencor Hosp. V. Aetna Life Ins [2]
Judge Sarah Evans Barker Signed on 12/31/01

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

VENCOR HOSPITALS LIMITED PARTNERSHIP D/B/A VENCOR HOSPITAL INDIANAPOLIS,	)	
Plaintiff,	)	
vs.	)	
AETNA LIFE INSURANCE COMPANY,	)	CAUSE NO. IP00-0695-C-B/S
Defendant.	)	

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

VENCOR HOSPITALS-LIMITED PARTNERSHIP d/b/a VENCOR HOSPITAL-INDIANAPOLIS, Plaintiff,	)	
vs.	)	IP 00-0695-C-B/S
AETNA LIFE INSURANCE COMPANY, Defendant.	)	

ENTRY AFTER BENCH TRIAL

This matter comes before the Court following a bench trial on September 24-26 and October 3, 2001, in which Plaintiff Vencor Hospitals ("Vencor") claimed that Defendant Aetna U.S. Healthcare ("Aetna") misrepresented the coverage provided for Woneta Hargis (Hargis), a beneficiary under an Aetna-administered benefits plan. Vencor argued based on theories of fraud and promissory estoppel that Aetna should pay the costs of medical services that Vencor provided to Ms. Hargis. For the reasons discussed below, we find Defendant LIABLE in the amount of $289,951.98.

I. Findings of Fact

Woneta Hargis, a Nabisco, Inc. ("Nabsico") employee, was covered by an insurance plan funded by Nabisco and administered by Aetna at the time of all events giving rise to this dispute. The plan consisted of basic benefits with a lifetime maximum benefit of $500,000 and a

Medicare-eligible portion with lifetime maximum benefits of $50,000.

Vencor operates two hospital facilities in the metropolitan Indianapolis area, one in Indianapolis and one in Greenwood, Indiana. Each hospital in the Vencor system is a for-profit facility and exercises discretion in admitting patients based on established admissions criteria, including consideration of a patient's available benefits and overall financial picture. Vencor officials sometimes consulted with patients and their families and placed already-admitted patients at other facilities based on financial limitations. However, Vencor's policies mandated that Medicare patients could only be discharged for medical reasons.

On or about June 4, 1998, Ms. Hargis sought treatment at Vencor Hospital-Indianapolis. Prior to Ms. Hargis' admission, Vencor employees Rachel Rodeghier and Deborah Smith attempted to verify with Aetna the precise level of Ms. Hargis' medical coverage. At that time, Vencor utilized a double-check system by which two representatives would call an insurance carrier independently to verify coverage levels for a particular patient. Rodeghier, then a Vencor accounts payable/patient admissions clerk, telephoned Aetna to verify Ms. Hargis' available benefits. Insurance verification was one of many tasks Rodeghier was assigned. Her only training in insurance verification came from observing calls made by her supervisor, Smith, then a Vencor office manager. Rodeghier spoke with John McIntyre, an Aetna customer service representative, who accessed Ms. Hargis' benefits information using a computerized database. When Rodeghier provided information identifying Ms. Hargis, McIntyre quoted Ms. Hargis' basic benefits and a lifetime maximum of $500,000. Based on this conversation, Rodeghier completed an insurance verification form listing the lifetime maximum of $500,000. McIntyre

made a simultaneous and consistent record of the conversation using his computerized note-taking system.

Smith then placed a follow-up phone call to Aetna to verify the benefits available for Ms. Hargis. Smith spoke with Jacqueline Bianco, a longtime Aetna customer service representative who had in the past won awards within Aetna for accuracy in benefits quotations. Bianco requested certain identifying information for Ms. Hargis, including her age. Adding her own notations to Rodeghier's handwritten insurance verification form, Smith understood from her conversation with Bianco that Ms. Hargis was eligible for a lifetime maximum benefit of $500,000, as McIntyre had indicated previously. Bianco's notes from the conversation, however, suggest that she quoted Ms. Hargis' lifetime maximum as $50,000 to Smith. Both Smith's and Bianco's notes of the conversation were made contemporaneously.[1]

Following these conversations and based on the information as to coverage limits that Vencor had received, Ms. Hargis was admitted to Vencor Hospital- Indianapolis on June 5, 1998. At that time, Vencor also had a practice of estimating Medicare exhaustion dates for patients, by which Vencor estimated Ms. Hargis' exhaustion date to be October 10, 1998. In the ensuing months, Vencor compiled and submitted to Aetna numerous forms referred to as "UB92s," which detailed and requested payment for services rendered for and procedures performed on

[1] Neither the employees of Vencor nor Aetna had specific recall of any of these conversations or processing steps. Thus, they relied on documents and computer records made at the time of the transactions as well as their routine practices.

Ms. Hargis on particular dates.[2] On January 7, 1999, Vencor received notice that Ms. Hargis' Medicare benefits had been exhausted. Aetna relies on receiving such letters from providers because Aetna has no direct communications with Medicare, and Aetna typically does not determine or pay out benefits until a Medicare exhaust letter has been received. Despite Vencor's policy and practice of forwarding such letters promptly to benefits carriers, no one from Vencor forwarded the Medicare exhaust letter to Aetna at that time or within the subsequent few weeks. Ms. Hargis remained in Vencor's care throughout the first half of 1999.[3]

In May or June 1999, Barbara Davenport, then a biller and later a business office manager with Vencor Hospital, received "Explanation of Benefits" forms ("EOBs") from Aetna stating that more information was needed before Aetna would pay pending claims relating to Ms. Hargis. Davenport mailed to Aetna a billing statement for services through June 15, 1999, along with a copy of the Medicare exhaust letter received by Vencor in January–the first copy of such letter forwarded by Vencor to Aetna.

In August 1999, Davenport received an EOB from Aetna stating that charges would not

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[2] Vencor uses UB92s to itemize the procedures and costs relevant to a patient between particular dates of service. The information featured on these forms is typically pulled from an electronic database. Multiple forms may cover the same time period, and the date on which a UB92 is generated may not necessarily relate to the dates on which the listed services were rendered. Vencor typically submits UB92s to benefits carriers soon after the dates of service to receive payment. Aetna relies on forms such as the UB92 to determine proper payment amounts for particular patients. In response to UB92s, Aetna generates "Explanations of Benefits" ("EOBs") to explain payment amounts and reasons for nonpayment.

[3] Vencor ceased care of Ms. Hargis in June 1999, when Ms. Hargis took up residence in a nursing home facility. Ms. Hargis is now deceased.

be paid because Ms. Hargis' benefits under the plan had been "maxed," or exhausted. When Davenport learned of Aetna's position, she telephoned Aetna customer service and spoke with an Aetna representative identified only as "Jonelle." Jonelle told Davenport that Ms. Hargis was covered by a two-tiered policy and that, because Ms. Hargis was entitled to Medicare benefits, she was eligible for a lifetime maximum payout under the Aetna policy of $50,000. Davenport subsequently spoke with Laurie Huber, a second Aetna customer service professional. Huber told Davenport that her computer notes reflected a lifetime maximum benefit of $50,000. Although Huber maintains she did not check any supplementary computer records or notes in confirming Ms. Hargis' benefits, Davenport claims that Huber told her the computer notes reflected a June 4, 1998 quote of $500,000 for Ms. Hargis' lifetime maximum. In September 1999, Davenport again called Aetna's customer service number and spoke with an unnamed Aetna representative, who quoted Ms. Hargis' lifetime maximum as $500,000. Davenport made no computer notation of this conversation, like her other calls to Aetna regarding Ms. Hargis. Davenport requested but did not receive a copy of Ms. Hargis' benefits policy from Aetna.

Davenport provided the Aetna customer service number to Lars Ankersen, then Assistant Administrator Finance ("AAF") at Vencor Hospital-Indianapolis and formerly the AAF at Vencor's Greenwood facility. Ankersen contacted an Aetna representative named "Laura," who told him that Ms. Hargis' lifetime maximum benefits were $50,000. Laura told Ankersen that the Aetna computer system showed that an Aetna representative had informed Vencor up front that Ms. Hargis had a $500,000 lifetime maximum. About one month after this conversation, Ankersen again called Aetna's customer service number and was told by yet another unnamed

customer service representative that Ms. Hargis had a lifetime maximum of $500,000.

In response to the UB92s forwarded by Davenport, on September 3, 1999, Aetna asserted that Ms. Hargis was eligible for a maximum lifetime benefit of only $50,000. Vencor filed suit in federal district court against Aetna for promissory estoppel, fraud, and negligent misrepresentation. In a September 6, 2001 order, we granted summary judgment in favor of Aetna on the negligent misrepresentation claim. The two remaining claims came before the Court in the bench trial that concluded in October.

II. Conclusions of Law

Vencor contends that Aetna represented that Ms. Hargis qualified for lifetime maximum benefits of $500,000 and, relying on that oral representation, Vencor provided Ms. Hargis with services in the expectation of reimbursement by Aetna. Aetna counters that Ms. Hargis's lifetime maximum benefits totaled $50,000, that no Aetna representative quoted a $500,000 lifetime maximum benefit, and moreover, that Aetna is not liable to Vencor for such amount because Vencor did not reasonably rely on Aetna's benefit representation as a promise of payment.

A. *Promissory estoppel*

Indiana law allows for the enforcement of oral promises lacking consideration under the doctrine of promissory estoppel. Tincher v. Greencastle Federal Sav. Bank, 580 N.E.2d 268, 272 (Ind. Ct. App. 1991). The elements of promissory estoppel under Indiana law include:

> (1) a promise by the promisor, (2) made with the expectation that the promisee will rely thereon, (3) which induces reasonable reliance by the promisee, (4) of a definite and substantial nature, and (5) injustice can be avoided only by enforcement of the promise.

Higginbottom ex rel Davis v. Keithley, 103 F. Supp. 2d 1075, 1082 (S.D. Ind. 1999), citing First Nat. Bank of Logansport v. Logan Mfg. Co., 577 N.E.2d 949, 954 (Ind. 1991). Stated more succinctly, "a promissor who induces a substantial change of position by the promisee in reliance upon the promise is estopped to deny enforceability of the promise." Weinig v. Weinig, 674 N.E.2d 991, 997 (Ind. Ct. App. 1996). The party invoking the doctrine of promissory estoppel bears the burden of establishing all facts necessary to support its application. First Nat. Bank of Logansport, 577 N.E.2d at 955.

Aetna contends that any statement of maximum lifetime benefits, regardless of the amount quoted, does not constitute a promise to pay such amount to Vencor. Under Indiana law, a promise is "'a voluntary commitment or undertaking by the party making it (the promisor) addressed to another party (the promisee) that the promisor will perform some action or refrain from some action in the future.' Although no special form of words is necessary to create a promise, the mere expression of an intention is not a promise." Medtech Corp. v. Indiana Ins. Co., 555 N.E.2d 844, 847 (Ind. Ct. App. 1990) (internal citations omitted).

Aetna also contends that a quotation of lifetime maximum benefits does not represent a promise to pay because it does not indicate what proportion of the total amount remains available after earlier payments to other providers. However, this argument only addresses Aetna's representations as an affirmative promise to pay $500,000 to Vencor. In casting the argument as

such, Aetna misses the thrust of Vencor's argument–that Aetna represented that it would continue evaluating benefits claims for Ms. Hargis up to the $500,000 limit.

Aetna's arguments regarding the nature of the representation more directly address the reliance elements of Vencor's promissory estoppel claim. However, the evidence submitted on these points does not cut in Aetna's favor. First, evidence presented by both Aetna and Vencor established that benefits verification calls are a usual and customary part of the health care/benefits industry, at least as practiced by Vencor and Aetna. Aetna's conscientious efforts to ensure accuracy in such verification clearly illustrate the premium Aetna places on providing accurate benefits quotations. Aetna would not strive to achieve such accuracy unless it were intended or reasonably foreseeable that health care providers would rely on such quotations. In light of industry practice of quoting and verifying available benefits, any reliance by Vencor on Aetna's estimates was certainly reasonable under the circumstances. In addition, Vencor utilized its own two-tiered verification system, obtaining quotations from two different Aetna representatives to double-check the quoted figures. These quality-assurance procedures for benefits quotations justified Vencor's reliance on Aetna's estimate.

As to Vencor's actual reliance on Aetna's benefits quotation, Ankersen testified that financial resources are one of many criteria used by Vencor in making admissions decisions. Although Ankersen was not personally involved in the decision to admit Ms. Hargis, it is reasonable to assume that Vencor weighed Ms. Hargis' financial situation, just as it would in the case of any other patient. Moreover, if such data were not crucial to Vencor's admissions process, there would have been no reason for Vencor to obtain the information prior to Ms.

Hargis' admission.

Aetna disputes the relevance of Davenport's and Ankersen's subsequent phone calls to the Aetna customer service number, which yielded $500,000 lifetime maximum quotations, arguing that Vencor could not reasonably have relied on these subsequent statements in admitting or treating Ms. Hargis. While these calls may not establish reliance based on their timing, they do tend to undercut Aetna's claims that none of its representatives quoted the $500,000 lifetime maximum applicable to Ms. Hargis. Altogether, there is evidence that McIntyre and at least two other Aetna representatives quoted the $500,000 limit when contacted by Vencor employees.

Aetna characterizes this dispute as a contest of credibility between the recorded recollections of two customer service representatives: Bianco, an experienced award-winner, and Smith, a less experienced benefits verifier with a questionable work history. The testimony of Smith and Bianco does suggest two diametrically opposite accounts of communications between Vencor and Aetna. Fortunately, though, we need not resolve this credibility conflict to decide this dispute. Vencor produced several credible witnesses, including Ankersen and Davenport, who confirmed the information that Deborah Smith first obtained from Aetna. The evidence suggests that multiple Vencor employees, not just Smith, obtained $500,000 lifetime maximum benefits quotations from Aetna representatives. We find this evidence credible and persuasive.

While evidence regarding Bianco's proficiency is not lost on us, the weight of the evidence suggests an inherently reasonable explanation for how the misrepresentation could have come about through a series of missteps. The evidence shows that on more than one occasion

Aetna represented to Vencor that Ms. Hargis' lifetime maximum benefit was $500,000, presumably because, as witness testimony revealed, Ms. Hargis' Aetna's computer screen listing Ms. Hargis' basic benefits indicated a lifetime maximum of $500,000. A simple, even unintentional failure to gather more specific details of Ms. Hargis' benefits plan would yield the $500,000 figure. At least one Aetna representative, McIntyre, admits he did not go beyond the basic benefits screen. From the evidence adduced at trial, we can reasonably deduce he was not the only one.

We find that Aetna misrepresented to Vencor employees the lifetime maximum benefits available for Ms. Hargis. Aetna did so with the knowledge that Vencor would rely on such information, and Vencor reasonably relied on the quotation Aetna provided. This reliance led Vencor to admit Ms. Hargis and provide substantial, costly medical treatment, for which Vencor unjustly bore the substantial cost of Aetna's misstatement. Therefore, we find that Aetna is LIABLE for Vencor's damages resulting from Aetna's miquotation of benefits.

B. *Fraud*

Under Indiana law, to prevail on a claim for fraud, one must establish:

> 1) a false statement of past or existing material fact 2) made with knowledge it was false or made recklessly without knowledge of its truth or falsity 3) made for the purpose of inducing the other party to act upon it 4) and upon which the other party did justifiably rely and act 5) proximately resulting in injury to the other party.

Baxter v. I.S.T.A. Ins. Trust, 749 N.E.2d 47, 52 (Ind. Ct. App. 2001); see also Rice v. Strunk, 670 N.E.2d 1280, 1289 (Ind. 1996). A statement of future intention, unlike a statement of past or

existing fact, cannot support an action for fraud. Peoples Outfitting Co., Inc. v. General Elec. Credit Corp., Inc., 549 F.2d 42, 46 (7th Cir. 1977); Schwartz v. Oberweis, 826 F. Supp. 280, 288 (N.D. Ind. 1993); Sachs v. Blewett, 185 N.E. 856 (Ind. 1933).

Vencor's claims for relief are problematic in that one necessarily undermines the other. Vencor has sued Aetna on theories of promissory estoppel and fraud, alleging that Aetna promised some form of future reimbursement for up to $500,000 services provided to Ms. Hargis. Promissory estoppel requires a promise to take some future action, while fraud hinges on the misstatement of some past or existing fact. Aetna's disputed representation in this case obviously embodies an intention on Aetna's part to evaluate and make future payments up to the stated amount, not the type of factual representation necessary to support a fraud claim under Indiana law.

Furthermore, Vencor's evidence failed to establish that Aetna's statement of Ms. Hargis' lifetime benefits was made with knowledge or recklessness as to its falsity. At most, the evidence showed the substantial likelihood that inadvertence or the negligent failure to ask the right questions led Aetna representatives to quote the wrong lifetime maximum. Nothing established intentional or even reckless behavior on the part of any Aetna employees. Therefore, we find that Aetna is NOT LIABLE for fraud as alleged by Vencor.

III. Damages

Contrary to Aetna's characterization, Vencor's damage estimate (as amended at trial) provided a useful summary of charges billed to but not paid by Aetna for treatment of Ms.

Hargis. By this summary, based on the supporting UB92s discussed at trial, Vencor incurred unreimbursed expenses totaling $617,912.93.

However, the damage amount must be adjusted downward to reflect payments made by Aetna to Vencor for Ms. Hargis' treatment and amounts billed directly to Ms. Hargis. Evidence introduced by Vencor reveals that Aetna made payments in the following amounts: $2,444.80 for July 16-31, 1998; $2,903.20 for August 1-15, 1998; $4,889.60 for August 16-31, 1998; $4,584 for September 16-30, 1998; and $3,056 for October 1-10, 1998; $12,695.48 for October 11-15, 1998; $2,865.06 for October 16-31, 1998; $43.53 for May 16-31, 1999; and $193.42 for June 1-15, 1999. Aetna made no additional payments to Vencor because Vencor's charges, in addition to bills submitted by other providers, had exhausted Ms. Hargis' $50,000 lifetime maximum benefit.[4]

Vencor's recovery must be further limited by Vencor's failure to mitigate its damages. In an action based on an enforceable agreement, "the non-breaching party, as a general rule, must mitigate his damages, and the breaching party has the burden to prove that the non-breaching party has not used reasonable diligence to mitigate its damages." Sheppard v. Stanich, 749 N.E.2d 609 (Ind. Ct. App. 2001); see also National Advertising Co. v. Wilson Auto Parts, Inc., 569 N.E.2d 997, 1001 (Ind. Ct. App. 1991). Vencor failed to forward the Medicare exhaustion letter to Aetna when it was received in January 1999, which reasonably would have prompted

[4] In addition, Vencor's damage summary incorrectly listed the October 11-15, 1998 amount assigned to Ms. Hargis as $1,548.72, although Vencor's own exhibit shows that $3,173.87 was assigned to Ms. Hargis during this period. Pl's Ex. 16 at unnumbered 8. Therefore, the corrected amount must also be subtracted from Vencor's damage estimate.

communication between Aetna and Vencor regarding covered charges for Ms. Hargis. Davenport testified that Vencor did not forward the exhaust letter to Aetna until June 1999 in response to Aetna's request for information. Davenport also indicated that such delay in forwarding the exhaust letter violated Vencor's own policies regarding the handling of such correspondence. In addition, Aetna employee Linda Whitman testified that if Vencor had forwarded the Medicare exhaust letter and UB92s to Aetna promptly, Aetna would have processed the claims and notified Vencor earlier that Ms. Hargis' lifetime maximum benefit had been reached.

Vencor should have made Aetna aware of the Medicare exhaustion in a timely fashion so that Aetna could have responded to the change in Ms. Hargis' Medicare status. Therefore, the damage estimate must be reduced to reflect Vencor's dilatory handling of the letter. Accordingly, charges accrued between February 16, 1999, (allowing reasonable time for transmission of the Medicare exhaust letter to Aetna) and June 30, 1999, totaling $291,111.99 must be deducted from the total damages.

IV. Conclusion

Both parties stressed the routineness of the transactions at issue in this case and the frequency with which their representatives completed such calls. Indeed, the routineness of these communications may have contributed significantly to the dispute before us. Vencor and Aetna employees routinely participate in telephone conversations to verify insurance coverage levels for particular patients. In such repetitive communications, it is easy to envision missed details and

subtle understandings getting lost in transmission, either inadvertently or in pursuit of efficiency. In this case, the weight of the evidence showed that Aetna representatives provided inaccurate information to Vencor regarding the level of Ms. Hargis' coverage, most likely because of a misunderstanding regarding the nature of Ms. Hargis' benefits plan. Vencor reasonably relied on the confirmation of benefits it received from Aetna in admitting Ms. Hargis. Accordingly, we find Defendant LIABLE for damages in the amount of $289,951.98 and Judgment shall be so entered.[5]

It is so ORDERED this _____ day of January 2002.

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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[5] As explained above, because we do not find that Aetna engaged in any intentional or reckless misrepresentation of past or present fact, we find Aetna NOT LIABLE on the fraud claim.