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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

TENET HEALTHSYSTEM HOSPITALS, INC., Plaintiff and Appellant, v. MEMORIAL HOSPITALS ASSOCIATION, Defendant and Respondent.	C036061 (Super. Ct. No. 99AS02585)

Plaintiff Tenet HealthSystem Hospitals, Inc. (Tenet), claimed defendant Memorial Hospitals Association (Memorial) breached an agreement by underpaying Tenet for services rendered to certain patients under Memorial's responsibility. The trial court granted summary judgment for Memorial. We affirm.

FACTS

Tenet and Memorial are acute care hospitals. Both are parties to various capitation agreements with insurance

carriers.[1] Under these agreements, the hospital provides specified medical services to the carrier's insured in exchange for a set portion of the monthly premium paid by the insured. Of relevance here, Memorial had entered into a capitation agreement with Kaiser Foundation Health Plan (Kaiser).

Tenet and Memorial entered into various agreements with each other in order to best implement their various capitation agreements and to reduce costs. In general, these agreements allowed each of the hospitals' capitated patients to receive care at the other's hospital subject to reimbursing the servicing hospital at rates established in the agreements.

On June 27, 1996, the parties executed a Letter of Agreement (1996 Letter Agreement), setting forth the cost of services rendered by Tenet to Memorial's patients who were members of Kaiser. Memorial agreed to pay Tenet $1,700 per diem for neo-natal intensive care unit (NICU) services provided by Tenet to Memorial's Kaiser patients. The 1996 Letter Agreement stated the reimbursement rates for all other medical services provided to Memorial's Kaiser patients, except for certain rehabilitative services, would be negotiated on a case-by-case basis.

The 1996 Letter Agreement remained effective for one year, and thereafter automatically renewed itself for additional one-

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[1] The term "capitation" is defined in part as "a uniform payment payable on a per capita basis [such as] an annual fee paid a doctor or medical group for each patient enrolled under a health plan . . . ." (Webster's 3d New Internat. Dict. (1966) p. 332.)

year periods unless terminated. Either party could terminate the agreement upon 30 days written notice, with or without cause.

On October 1, 1996, the parties entered into a Reciprocal Payment Agreement (1996 Reciprocal Agreement). Under this agreement, both parties agreed to reimbursement rates for services each provided to the other's capitated patients. However, the 1996 Reciprocal Agreement specifically excluded Kaiser members from the patients covered under its terms.

By notice dated October 6, 1997, Tenet terminated the 1996 Letter Agreement. The termination became effective November 6, 1997. The notice stated all other reciprocal rates between the parties remained in effect.

On January 15, 1998, the parties entered into two new agreements. One was a new Reciprocal Payment Agreement, written to be effective retroactively as of September 1, 1997 (1997 Reciprocal Agreement). This agreement contained an integration clause which read in pertinent part: "This Agreement, including its attachments, constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties."

Like its predecessor, the 1997 Reciprocal Agreement excluded from its coverage members of Kaiser, "including those with commercial payers and Medicare . . . ."

The second agreement the parties executed on January 15, 1998, was another Letter of Agreement (1998 Letter Agreement).

The parties made this agreement effective retroactively as of January 1, 1998. Unlike the 1996 Letter Agreement, the 1998 Letter Agreement was limited to only "NICU Level III" services provided by Tenet to Memorial's Kaiser patients. Under the new terms, Memorial was required to pay $2,500 per diem if the infant Kaiser patient weighed less than 1,200 grams, and $1,800 per diem if the infant weighed over 1,200 grams. The 1998 Letter Agreement included the same termination provisions contained in the 1996 Letter Agreement.

In April 1998, the parties amended the 1997 Reciprocal Agreement's reimbursement schedule by executing Amendment #1. Amendment #1 was effective retroactively as of September 1, 1997, the effective date of the 1997 Reciprocal Agreement. The amendment required Memorial to reimburse Tenet for services rendered to "all" Kaiser commercial and senior members at the rate of 80 percent of billed charges.[2]

Amendment #1 also stated: "All other terms and conditions shall remain as specified." The amendment said nothing about amending or terminating the 1998 Letter Agreement.

Memorial executed Amendment #1 on April 8, 1998. Memorial forwarded the executed amendment to Tenet under cover of a letter dated the same day stating: "Our agreement which

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[2] Testimony indicated a "commercial member" was any person, child or adult, who was a member of Kaiser through an employer's or self-insured health plan, while a "senior member" was a member eligible for Medicare. The two groups did not include each other.

pertains to Neo Natal services remains the same." Tenet signed the amendment on April 14, 1998, without objection.

By letter dated April 23, 1998, Memorial requested Tenet to "accept our Neonatal all-inclusive rate to include" charges for obstetrical services provided to Kaiser mothers of infants predetermined to require NICU services. Tenet apparently did not accept Memorial's proposal. Instead, in May 1998, the parties agreed to Memorial reimbursing Tenet for obstetrical services rendered to Kaiser mothers of high risk infants at the per diem rate of $700 per day. The parties memorialized this agreement in Amendment #2 to the 1997 Reciprocal Agreement. Amendment #2 was effective retroactively as of January 1, 1998, the same date the 1998 Letter Agreement became effective.

In October 1998, Tenet forwarded a computer disk to Memorial containing information on accounts for certain patients capitated to Memorial who received treatment at Tenet's facilities. The amounts shown in the internal accounting ledger for Kaiser NICU patients and mothers, except for two patients, were consistent with the rates expressed in the 1998 Letter Agreement and Amendment #2.

Memorial reimbursed Tenet for its services to Memorial's Kaiser patients consistent with the terms of the two Letter Agreements and Amendment #2. However, on October 16, 1998, Tenet allegedly asserted for the first time its services to Kaiser NICU patients were to have been reimbursed under the terms of the 1997 Reciprocal Agreement as amended by Amendment

#1, i.e., at 80 percent of billed charges, not under the terms of the 1998 Letter Agreement.

By letter dated December 10, 1998, Tenet gave Memorial notice of its intent to terminate the 1998 Letter Agreement. Tenet did so while expressly noting its letter was not to be considered as agreeing its NICU services for Memorial's Kaiser patients was governed by the 1998 Letter Agreement.

PROCEDURAL HISTORY

Tenet filed a complaint against Memorial in May 1999. The complaint alleged all services Tenet provided to Memorial's Kaiser patients were incorporated into the rates and schedules established by the 1997 Reciprocal Agreement pursuant to Amendment #1. It asserted Memorial breached those agreements with regards to its Kaiser NICU patients. Tenet sought compensatory damages in excess of $1,020,000.

Memorial moved for summary judgment. It claimed the rates established by the 1998 Letter Agreement, and not Amendment #1 to the 1997 Reciprocal, established the reimbursement rates for services Tenet rendered to Memorial's Kaiser NICU patients. In support of its summary judgment motion, Memorial introduced the extrinsic evidence discussed above to prove the 1998 Letter Agreement and the 1997 Reciprocal Agreement, as amended by Amendment #1, were separate agreements. One did not supercede the other. Because the 1998 Letter Agreement continued to establish the reimbursement rates for NICU services rendered to Memorial's Kaiser patients, Tenet could not recover against

Memorial under the terms of the 1997 Reciprocal Agreement as a matter of law.

Tenet disagreed. It asserted the parties executed Amendment #1 with the intent to bring all of Memorial's Kaiser patients within the rates established by the 1997 Reciprocal Agreement, including the NICU patients. To the extent Amendment #1 contradicted the 1998 Letter Agreement, Amendment #1 prevailed. It was an integrated agreement by means of the integration clause contained in the 1997 Reciprocal Agreement. As a result, the parol evidence rule barred the admission of Memorial's extrinsic evidence to contradict the allegedly clear meaning of the 1997 Reciprocal Agreement and Amendment #1.

The trial court issued a tentative ruling granting Memorial's motion. Tenet failed to request oral argument. Under Sacramento County Superior Court Local Rule 3.04, the trial court held no oral argument on the motion and the tentative ruling became the court's order.

The trial court determined the 1997 Reciprocal Agreement, as amended by Amendment #1, and the 1998 Letter Agreement, were two separate agreements governing separate matters. Amendment #1 did not supercede the 1998 Letter Agreement. The parol evidence rule did not bar introduction of the extrinsic evidence. Undisputed facts demonstrated Memorial fully complied with the contractual requirements of both contracts. Thus, there was no issue of material fact to be resolved and Memorial was entitled to judgment as a matter of law.

Tenet now appeals, contending the trial court (1) improperly interpreted the contract by means of inadmissible parol evidence; (2) improperly resolved triable issues of fact which should have been determined by a jury; (3) issued an order which did not dispose of all pending issues; and (4) violated Code of Civil Procedure section 437c by enforcing its local rule precluding oral argument on summary judgment where no party specifically requests argument following the posting of a tentative ruling.

DISCUSSION

I

Standard of Review

"'"'Summary judgment is granted when there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. [Citation.] We review the trial court's decision to grant [defendant's] summary judgment de novo.' [Citation.]" [Citation.] An appellate court is not bound by the trial court's stated reasons, if any, supporting its ruling; we review the ruling, not the rationale. [Citation.]' (*Prilliman v. United Air Lines, Inc.* (1997) 53 Cal.App.4th 935, 951.)

"'[A] defendant moving for summary judgment has the burden to show that the plaintiff cannot establish at least one element of his cause of action, "or that there is a complete defense to that cause of action." [Citations.] Once the defendant meets this burden, the burden shifts to the plaintiff to show "that a triable issue of one or more material facts exists as to that

cause of action or a defense thereto." [Citation.] [¶] . . . The burden, however, does not shift to plaintiff until defendant carries its initial burden to show that an essential element of the cause of action "cannot be established. . . ." [Citation.] [¶] If the moving defendant argues that it has a complete defense to the plaintiff's cause of action, the defendant has the initial burden to show that undisputed facts support each element of the affirmative defense. Once it does so, the burden shifts to plaintiff to show an issue of fact concerning at least one element of the defense. [Citation.]' (*Bacon v. Southern Cal. Edison Co.* (1997) 53 Cal.App.4th 854, 858, quoting Code Civ. Proc., § 437c, subd. (o)(2).)" (*Hanson v. Lucky Stores, Inc.* (1999) 74 Cal.App.4th 215, 223-224.)

II

The Parol Evidence Rule Did Not Apply

Tenet claims the trial court violated the parol evidence rule by admitting and relying upon Memorial's extrinsic evidence to determine the 1998 Letter Agreement survived the adoption of Amendment #1 and governed the rates paid for NICU services. We conclude the trial court committed no error.

A contract must be interpreted to give meaning and effect to the mutual intention of the parties at the time of the execution of the contract, as far as the intention is ascertainable and lawful. (Civ. Code, § 1636.) Absent any ambiguity, the language of the contract shall govern the interpretation. (Civ. Code, § 1638.) However, a contract only

extends to those matters the parties intended it to cover, regardless of the breath of the language. (Civ. Code, § 1648.)

With certain exceptions, the parol evidence rule prohibits the introduction of extrinsic evidence to contradict or add terms to an integrated agreement. (Code Civ. Proc., § 1856, subd. (a); 2 Witkin, Cal. Evidence (4th ed. 2000) Documentary Evidence, § 65, p. 186.) "'An integrated agreement is a writing or writings constituting a final expression of one or more terms of an agreement.'" (*Alling v. Universal Manufacturing Corp.* (1992) 5 Cal.App.4th 1412, 1433, quoting Rest.2d Contracts, § 209, subd. (1), p. 115.)

Even if a contract is deemed integrated, the parol evidence rule allows extrinsic evidence to be admitted for the purpose of explaining the terms therein. (Code Civ. Proc., § 1856, subd. (b).) Also, the parol evidence rule does not bar evidence regarding the circumstances under which the agreement was entered, evidence to explain an extrinsic ambiguity, or evidence to otherwise interpret the terms of the agreement. (Code Civ. Proc., § 1856, subd. (g).)

Even when words appear to have a plain meaning, other meanings may become a possibility once the events, conditions, expressions, and circumstances surrounding execution are disclosed. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 389; Rest.2d Contracts, § 214, com. b, p. 133.)

Furthermore, when determining the intent of the parties, the court may use the doctrine of practical construction. This doctrine is based on the premise "actions speak louder than

words." (*Crestview Cemetery Assn. v. Dieden* (1960) 54 Cal.2d 744, 754 (hereafter *Crestview*); 1 Witkin, Summary of Cal. Law (9th ed. 1987) Contracts, § 689, p. 622.) The parties to a contract are in the best position to know what the agreement entails. (*Crestview, supra,* 54 Cal.2d at p. 753; 1 Witkin, Summary of Cal. Law, *supra*, Contracts, § 689, p. 622.) The way parties treat a condition can be the best way to resolve ambiguities. (*International Billings Services v. Emigh* (2000) 84 Cal.App.4th 1175, 1185.)

Actions subsequent to the execution of the contract, while relations are still harmonious, may be the best means to ascertain the intent. (*Crestview, supra,* 54 Cal.2d at p. 753.) "Words are frequently but an imperfect medium to convey thought and intention. When the parties to a contract perform under it and demonstrate that they knew what they were talking about, the court should enforce that intent." (*Id.* at p. 754.)

It is undisputed the integration clause established the 1997 Reciprocal Agreement as a fully integrated agreement. Tenet contends Amendment #1 necessarily incorporates the terms of the 1997 Reciprocal Agreement because it is a mutual amendment of that agreement and the amendment states "[a]ll other terms and conditions shall remain as specified." As such, Tenet argues Amendment #1 was also fully integrated. Memorial fails to bring forth any affirmative evidence to refute this position; therefore, we accept the 1997 Reciprocal Agreement as amended as an integrated agreement.

Evidence is admissible to explain or interpret the terms of an integrated agreement. (Code Civ. Proc., § 1856) Ambiguity existed in the meaning of the term *all* in Amendment #1. Even though, as Tenet asserts, *all* is facially a plain and clear term, when surrounding circumstances are ascertained, the definition of *all* becomes confused.

Ambiguity may be created by the subsequent actions of the parties. (*Crestview*, *supra,* 54 Cal.2d at p. 754.) If the parties to a contract have demonstrated, through their actions, the plain meanings of the words of the contract are inapplicable in the contract at issue, then enough ambiguity exists to allow extrinsic evidence to explain the meaning of those words. (*Ibid.*) If this were not the case, the court would, in effect, be enforcing a contract which means something entirely different to the parties. (*Ibid.*) Thus, extrinsic evidence is not barred by the parol evidence rule to explain the term *all* in this situation.

The circumstances surrounding execution of the 1997 Reciprocal Agreement and Amendment #1, and the parties' subsequent course of dealing, demonstrate the 1998 Letter Agreement and the 1997 Reciprocal Agreement were separate and exclusive agreements, the former governing NICU Kaiser patients and the latter governing all other patients, including non-NICU Kaiser patients.

In 1996, the parties entered a Reciprocal Payment Agreement and a Letter of Agreement, with similar provisions and terms to the 1997 and 1998 agreements in question. When Tenet terminated

the 1996 Letter Agreement, according to its provisions, the 1996 Reciprocal Agreement remained effective as to all patients, other than Kaiser patients. When the parties entered the 1997 Reciprocal Agreement, it replaced the 1996 Reciprocal Agreement in all respects.

On the *same date and at the same time* the parties executed the 1997 Reciprocal Agreement, the parties agreed to a new 1998 Letter Agreement, covering all Kaiser NICU patients. The termination procedures remained the same for both agreements. These acts indicate the parties understood the agreements to be separate and independent contracts, governing different types of patients.

Amendment #1 to the 1997 Reciprocal Agreement contained no revocation or limitation of the 1998 Letter Agreement. Memorial executed the amendment and subsequently forwarded it to Tenet for approval, along with the cover letter, which stated: "Our agreement which pertains to Neo Natal services remains the same." There is no evidence to suggest Tenet questioned or objected to the cover letter. Likewise, there is no evidence an exception was made in regards to the cover letter when Tenet signed the amendment.

When there is ambiguity in contract terms, the meaning attached by each party and the meanings each party knew or should have known have great bearing on the inquiry. (Rest.2d Contracts, § 214, com. b, p. 133.) The cover letter expressed Memorial's intention for the 1998 Letter Agreement to remain effective and for *all* to be exclusive of NICU Kaiser patients.

Upon receipt of the letter, Tenet “knew” or “should have known” of the meaning attached to the term *all* by Memorial. Thus, the negotiations surrounding Amendment #1 show *all* was not inclusive of Kaiser NICU patients.

The conduct subsequent to the execution of the contract and prior to any dispute arising supports this interpretation of the parties’ intent. Tenet continued to accept payments under the terms and conditions of the 1998 Letter Agreement after Amendment #1 was adopted. Tenet’s own internal accounting ledger, forwarded to Memorial, reflected amounts due consistent with the 1998 Letter Agreement per diem rate, and not with the 80 percent rate provided in Amendment #1.

Tenet contends it regarded the payments as partial payments towards the total balance due. However, Tenet fails to explain its own contrary accounting records. Furthermore, there is no evidence Tenet expected further payments due on any account until October of 1998, when the dispute arose.

Additionally, Tenet failed to secure a proper termination of the 1998 Letter Agreement until December 10, 1998. Tenet maintains the revocation was only a precautionary measure and in no way was meant as a concession of the 1998 Letter Agreement’s validity. However, Tenet earlier revoked the 1996 Letter Agreement under the same terms. Tenet knew the procedure to revoke the 1998 Letter Agreement and the effectiveness of such a revocation. Tenet’s lack of diligence in revocation indicates an initial acceptance of the 1998 Letter Agreement’s validity. It was not until Tenet appears to have recognized the potential

ambiguity in the terminology and sought to capitalize on it that Tenet acted to terminate the 1998 Letter Agreement.

Furthermore, Amendment #2's negotiations and acceptance indicate the continued validity of the 1998 Letter Agreement. Amendment #2 sets forth a per diem rate for high-risk mothers in the NICU. Amendment #2 is consistent with the existence of the 1998 Letter Agreement for several reasons.

Prior to assenting to Amendment #2, Memorial's director wrote a letter requesting NICU mothers be covered by the preexisting NICU rate. This statement is a direct reference to the 1998 Letter Agreement, which specifically covers NICU patients, and not the 1997 Reciprocal Agreement, which is a more general contract.

The letter regarding NICU mothers also provides notice to Tenet of Memorial's continued reliance on the 1998 Letter Agreement establishing rates for Kaiser NICU patients. Tenet was again put on notice of the meaning attached to the term *all* by Memorial. Tenet made no objection to the implication of the 1998 Letter Agreement and its continued effectiveness.

Moreover, if *all* Kaiser patients were already covered by Amendment #1, it would be both inconsistent and redundant to make a separate agreement covering Kaiser NICU mothers. The existence of Amendment #2 shows "*all* Kaiser patients" does not mean *all* in the strict meaning of the term.

Although Tenet did not accept Memorial's first proposition, it did agree to a per diem rate of $700. According to undisputed testimony, this rate provided Tenet less compensation

than the 80 percent reimbursement rate provided under the 1997 Reciprocal Agreement. Surely Tenet would not have agreed to a lower rate if it believed it was entitled to recover under the 1997 Reciprocal Agreement's higher rate.

Furthermore, Amendment #2 makes neither an express attempt to terminate the 1998 Letter Agreement, nor does it contain any language that could be construed as implying such a termination.

All of the above indicates the 1998 Letter Agreement and the 1997 Reciprocal Agreement and amendments were two separate, although complimentary contracts; i.e., the 1998 Letter Agreement governed all NICU Kaiser patients and the 1997 Reciprocal Agreement and its amendments governed most other Kaiser patients. The integration clause of the 1997 Reciprocal Agreement does not prevent the parties from entering into a separate contract addressing a matter not covered in the 1997 Reciprocal Agreement -- Kaiser NICU patients.

Further, the subsequent amendments to the 1997 Reciprocal Agreement do not conflict with the existence of two separate and exclusive agreements. It is perfectly logical to have one broad agreement, Amendment #1 to the 1997 Reciprocal Agreement, covering most Kaiser patients; a second, more specific 1998 Letter Agreement applicable only to Kaiser NICU patients, a group not covered in the 1997 Reciprocal Agreement; and a third, more specific Amendment #2 applicable only to Kaiser mothers of NICU patients, a group previously covered in the 1997 Reciprocal Agreement.

The extrinsic evidence thus was admissible to show the circumstances under which the 1997 Reciprocal Agreement and Amendment #1 were negotiated, the meaning of the term “all” in Amendment #1, and the manner in which the parties subsequently performed under the agreements.

III

Triable Issues of Material Fact

Tenet also argues the summary judgment order was improper because the findings by the trial court amounted to factual determinations which should have been given to a jury. Tenet’s position is erroneous. It is solely a judicial function to interpret a written instrument, unless the interpretation turns on the credibility of extrinsic evidence. (*Stevenson v. Oceanic Bank* (1990) 223 Cal.App.3d 306, 316-317; *Horsemen’s Benevolent & Protective Assn. v. Valley Racing Assn.* (1992) 4 Cal.App.4th 1538, 1559.)

Tenet asserted nothing regarding the credibility of the extrinsic evidence relied upon by the trial court. Tenet objected to the evidence only on the basis of the parol evidence rule. There was thus no dispute regarding the validity of the evidence, and, as we have already determined, the parol evidence rule did not bar the court from using the evidence to interpret the 1997 Reciprocal Agreement and Amendment #1. Hence, there was no triable issue of material fact.

We, as did the trial court, conclude the 1998 Letter Agreement established the reimbursement rate for NICU services rendered by Tenet to Memorial’s Kaiser patients. Because the

complaint does not seek relief under the 1998 Letter Agreement, summary judgment is proper.

IV

Final Disposition of All Issues

Tenet asserts the trial court's order should not be dispositive of their complaint because evidence demonstrated Memorial owed money on the accounts regardless of which agreement applied. However, as Memorial correctly points out, Tenet makes no reference to the record in support of this proposition. Tenet's failure to support the assertion with references to the record removes the matter from our consideration. (Cal. Rules of Court, rule 15(a).)

V

Validity of Local Rule

Tenet briefly asserts Sacramento County Superior Court Local Rule 3.04 violates Code of Civil Procedure section 437c because it improperly denies the litigants oral argument for summary judgment motions. We disagree.

Rule 3.04 states the court will issue a tentative ruling by 2:00 p.m. the day prior to the hearing. The tentative ruling becomes the court's order and no hearing will be convened unless a party desiring to be heard so advises the court clerk no later than 4:00 p.m. on the court day preceding the hearing. Tenet failed to call the court to schedule a hearing and was denied oral argument despite its attorney's personal appearance at court.

"[T]he references to a 'hearing' in Code of Civil Procedure section 437c . . . require the *opportunity* for oral argument . . . ." (*Mediterranean Construction Co. v. State Farm Fire & Casualty Co.* (1998) 66 Cal.App.4th 257, 262, italics added.) The statute does not require oral argument where the court provides counsel with an opportunity to have oral argument subject to compliance with tentative ruling procedures. Despite the statute's references to a hearing, judges "retain extensive discretion regarding how the hearing is to be conducted, including imposing time limits *and adopting tentative ruling procedures (see Cal. Rules of Court, rule 324)* . . . ." (*Id.* at p. 265, italics added.)

The trial court provided Tenet an opportunity to have oral argument, but Tenet failed to comply with the procedural prerequisites necessary to exercise that opportunity. Tenet's failure to timely request oral argument does not render Local Rule 3.04 in violation of Code of Civil Procedure section 437c. Had Tenet made such a request, it would have been permitted to orally argue.

Tenet argues Memorial's counsel violated rule 3.04 by failing to notify Tenet of the court's tentative ruling procedure. The rule requires the notice of the motion to inform the opposing party of the tentative ruling system, including the obligation to request oral argument. (Super. Ct. Sacramento County, Local Rules, Rule 3.04(D).) However, if Memorial violated that rule, Tenet's remedy was to file a motion for

sanctions in the trial court. (*Id.* Rule 1.05(B).) Nothing in the record indicates Tenet exhausted this remedy.

DISPOSITION

The judgment is affirmed. Costs on appeal awarded to Memorial.

NICHOLSON, J.

We concur:

BLEASE, Acting P.J.

CALLAHAN, J.