

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

INDEPENDENCE BLUE CROSS, and	:	NOVEMBER TERM, 2005
QCC INSURANCE COMPANY,	:	
	:	NO. 00761
Plaintiffs,	:	
	:	COMMERCE PROGRAM
v.	:	
	:	PROTOCOL DECISION
AIR LIQUIDE AMERICA, L.P., ALIG	:	
SERVICES, LLC, and MESSER	:	
GRIESHEIM INDUSTRIES, LLC,	:	
	:	
Defendants.	:	

ALIG, LLC,	:	JANUARY TERM, 2006
	:	
Plaintiffs,	:	NO. 02158
	:	
v.	:	
	:	
STANDARD SECURITY LIFE	:	
INSURANCE COMPANY OF NEW	:	
YORK, INDEPENDENCE BLUE CROSS,	:	
QCC INSURANCE COMPANY, HEALTH	:	
CARE SERVICES CORPORATION, and	:	
BLUE CROSS AND BLUE SHIELD OF	:	
TEXAS, INC.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 31st day of October, 2007, upon consideration of the Memorandum of Law and Reply Memorandum of Law submitted by ALIG, LLC (“ALIG”), the Memorandum of Law and Reply Memorandum of Law submitted by Standard Security Life Insurance Company of New York (“SSLI”), and all other matters of record, and after hearing oral argument on June 13, 2007, it is hereby **ORDERED** and **DECREED** that the claim for \$902,468.20 in medical expenses incurred by a spouse of an employee of Messer Grieshiem Industries Inc., which both

parties refer to in their briefs as the “Texas Claim,” is not covered under the Excess Loss Insurance Policy issued by SSLI to ALIG with an expiration date of March 31, 2004.

The parties stipulated to have this issue resolved by a three judge panel of this court pursuant to the Commerce Case Management Program Protocols For Alternative Dispute Resolution Procedure Using Three Judge Panel and Common Law Arbitration. As a result, this Order is final and not appealable.

The stay of the remaining claims asserted in these consolidated actions is hereby lifted.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J.

HOWLAND W. ABRAMSON, J.

MARK I. BERNSTEIN, J.

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STANDARD SECURITY LIFE	:	
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CARE SERVICES CORPORATION, and	:	
BLUE CROSS AND BLUE SHIELD OF	:	
TEXAS, INC.,	:	
	:	
Defendants.	:	

OPINION

The parties requested that a three judge panel of this court determine as a matter of law whether under the terms of a certain Excess Loss Insurance Policy, Standard Security Life Insurance Company of New York has a duty to reimburse ALIG, LLC with respect to a claim against ALIG, LLC for \$902,468.20. The following is the panel’s Opinion with respect to that issue.

I. Procedural History.

In November, 2005, Independence Blue Cross and its subsidiary, QCC Insurance Company, (collectively “IBC”) filed the first of these two consolidated cases. In the first action, IBC asserted a claim against Air Liquide America, L.P., ALIG Services, LLC, and Messer Greisheim Industries, LLC (collectively “ALIG”) for breach of an Administrative Services Agreement between the parties based on ALIG’s failure to pay an invoice issued by IBC in the amount of \$530,073.51. ALIG filed counterclaims against IBC for misrepresentation, negligence, and breach of the Administrative Services Agreement based on IBC’s failure timely to pay on ALIG’s behalf a claim for \$902,468.20.¹

In January, 2006, ALIG² filed the second of these actions against: 1) IBC;³ 2) Blue Cross and Blue Shield of Texas, Inc. and its parent company, Health Care Services Corporation (collectively “BCBST”); and 3) Standard Security Life Insurance Company of New York (“SSLI”). ALIG asserted claims against IBC for misrepresentation, negligence, and breach of the Administrative Services Agreement based on IBC’s failure timely to pay the Texas Claim on ALIG’s behalf. ALIG asserted claims against BCBST for misrepresentation, negligence, and breach of contract based on BCBST’s failure timely to pay the Texas Claim on ALIG’s behalf. ALIG asserted a claim against SSLI for breach of an excess insurance policy it issued to ALIG (the “Stop Loss Policy”) based on SSLI’s failure to reimburse ALIG for the Texas Claim.

The two cases were consolidated in April, 2006. ALIG and SSLI subsequently cross-moved for summary judgment on ALIG’s claim against SSLI for breach of the Stop Loss Policy.

¹ This claim was for medical services provided to a spouse of an employee of Messer Grieshiem Industries, Inc. (“MG”) by a hospital in Texas. The parties refer to the claim throughout their briefs as the “Texas Claim.”

² The action was filed by ALIG, LLC as successor in interest to MG.

³ ALIG asserted claims against both Independence Blue Cross and its subsidiary QCC Insurance Company.

IBC also moved for summary judgment on its claim against ALIG for breach of the Administrative Services Agreement and on ALIG's claims against IBC and BCBST.

In February, 2007, the parties stipulated to submit "the sole, controlling question of insurance coverage under the Stop Loss Policy" to a three judge panel of this court and, if necessary, to an arbitrator pursuant to the Commerce Case Management Program Protocols For Alternative Dispute Resolution Procedure Using Three Judge Panel and Common Law Arbitration (the "Protocols").⁴ As provided in the Protocols, the three judge panel decides all disputed issues of law raised by the parties, and the arbitrator decides any disputed issues of fact.⁵ As a result of the parties' stipulation, decision on IBC's Motion for Summary Judgment was deferred until after the panel's entry of this Order and Opinion.

ALIG and SSLI each submitted to the panel a memorandum of law and a reply to the other party's memorandum of law on the issue of whether SSLI must reimburse ALIG for the Texas Claim under the terms of the Stop Loss Policy. On June 13, 2007, the three judges assigned to the Commerce Court Program, Albert W. Sheppard, Jr., Mark I. Bernstein, and Howland W. Abramson, heard oral argument by counsel for ALIG and SSLI with respect to the coverage issue. This Opinion represents the panel's unanimous decision on the legal issues presented by the parties. Under the parties' stipulation and the Protocols, this Opinion is final and not appealable.

⁴ The Protocols and related forms are available on the court's website at the following locations: <http://fjd.phila.gov/pdf/cpcvcomprg/Protocols.pdf>; <http://fjd.phila.gov/pdf/forms/civil/Form-A12-5-05.pdf>; and <http://fjd.phila.gov/pdf/forms/civil/Form-B12-5-05.pdf>.

⁵ Depending on the nature of the case, the arbitrator's decision may be rendered before or after the panel's decision.

II. The Undisputed Facts.

ALIG had a self-funded employee health and welfare plan. The Stop Loss Policy issued by SSLI acted as excess insurance or reinsurance for the plan. If an ALIG employee or covered family member submitted an eligible health or medical benefit claim to ALIG that exceeded \$150,000, SSLI was obligated to reimburse ALIG for the overage up to a certain amount. The Stop Loss Policy provided coverage to ALIG from April 1, 2003 through March 31, 2004.⁶

ALIG had an Administrative Services Agreement with IBC under which IBC reviewed and paid health and medical benefit claims submitted to ALIG. The wife of one of MG's⁷ employees incurred \$902,468.20 in medical expenses prior to her death on March 15, 2004 (the "Texas Claim"). Because the Stop Loss Policy was set to expire sixteen days later, ALIG alleges that it instructed IBC to pay the Texas Claim in full immediately upon IBC's receipt of the Texas Claim.⁸

On March 23, 2004, the hospital in Texas where the medical expenses were incurred submitted the Texas Claim to one of IBC's local affiliates, BCBST. On March 25th, BCBST entered the Texas Claim into IBC's claims processing system. On March 29th, IBC approved the Texas Claim and instructed BCBST to pay it. On March 30th, ALIG wired funds to IBC to cover the Texas Claim. On March 31st, the last day of the Stop Loss Policy coverage period, BCBST received IBC's instruction to pay, and BCBST entered the Texas Claim into its own claims processing system, so that a check would be issued. BCBST printed and mailed the check

⁶ The Stop Loss Policy is attached as Exhibit A to ALIG's Memorandum of Law. The coverage dates are set forth on page 1 thereof.

⁷ MG is a predecessor in interest to ALIG.

⁸ A redacted copy of the letter from ALIG to IBC is attached as Exhibit D to ALIG's Memorandum of Law.

to the Texas hospital, but not until April 7, 2004, a week after the Stop Loss Policy's coverage expired.

ALIG demanded that SSLI reimburse it for the Texas Claim under the Stop Loss Policy, and SSLI refused on the basis that the Texas Claim did not fall within the Policy's coverage period.

III. Analysis of the Stop Loss Policy.

In order to determine if there is coverage for the Texas Claim under the Stop Loss Policy, the court must review the relevant terms of that Policy. The Stop Loss Policy provides as follows:

If during the Policy Year, or any fraction of a Policy Year, Losses for any Covered Person exceed the Specified Deductible Amount shown in the applicable Schedule [\$150,000], We [SSLI] will pay a benefit for such Covered Person in an amount equal to:

1. the amount by which Losses Paid during the Policy Year exceed the Specific Deductible Amount as shown in the Schedule [\$150,000] multiplied by:
2. the Benefit Percentage Payable [100%], subject to
3. the Maximum Specific Benefit as shown in the Schedule [\$1,850,000].⁹

Under the Definitions Section of the Policy:

LOSS OR LOSSES means amounts Paid, in accordance with the Policy Basis/Benefit Period shown on the Schedule, by You [ALIG] or the Administrator [IBC/BCBST] on Your behalf for benefits under the Plan, in settlement of claims for benefits under the Plan, or in satisfaction of judgments for benefits under the Plan.¹⁰

POLICY YEAR means the specified period of time during which the coverage provided under this Policy is in effect, as stated in the Schedule.¹¹

⁹ Stop Loss Policy, p. 9 (with amounts from p. 4 appearing in brackets).

¹⁰ *Id.*, p. 6.

¹¹ *Id.*, p. 7.

The Schedule of Excess Loss Insurance provides as follows:

POLICY BASIS/BENEFIT PERIOD:

Eligible Expenses Incurred from April 1, 2002 through March 31, 2004; and
Eligible Expenses Paid from April 1, 2003 through March 31, 2004.¹²

The Definitions Section further provides as follows:

BENEFIT PERIOD means the period of time, as shown in the Schedule, during which a covered expense must be Incurred, and/or Paid to be eligible for reimbursement under this Policy.¹³

INCURRED means the date on which an Eligible Expense was rendered to a Covered Person.¹⁴

PAID(Payment) means that a claim has been adjudicated by the Administrator [IBC] and the funds are actually disbursed by the Plan [ALIG] prior to the end of the Benefit Period [March 31, 2004]. Payment of a claim must be unconditional and directly made to a Covered Person or their health care provider(s) [the Texas hospital]. Payment will be deemed made on the date that both You [ALIG] or Your Administrator [IBC] directly tenders payment by mailing (or by other form of delivery) a draft or check; and the account upon which the payment is drawn contains, and continues to contain, sufficient funds to permit the check or draft to be honored by the institution upon which it is drawn.¹⁵

Interpretation of an insurance policy is a question of law for the court to resolve.¹⁶ “The intent of the parties to a written contract is deemed to be embodied in the writing itself; when the words are clear and unambiguous, the intent is to be gleaned exclusively from the express language of the agreement.”¹⁷ “Words of common usage in an insurance policy are to be

¹² *Id.*, p. 3. Similarly, the “POLICY PERIOD” is “April 1, 2003 through March 31, 2004.” *Id.*, p. 1

¹³ *Id.*, p. 5.

¹⁴ *Id.*, p. 6.

¹⁵ *Id.* p. 7.

¹⁶ Harleysville Ins. Cos. v. Aetna Cas. & Sur. Ins. Co., 568 Pa. 255, 258, 795 A.2d 383, 385 (2002).

¹⁷ Delaware County v. Delaware County Prison Employees’ Independent Union, 552 Pa. 184, 189, 713 A.2d 1135, 1137 (1998).

construed in their natural, plain and ordinary sense, and [the court] may inform [its] understanding of these terms by considering their dictionary definitions.”¹⁸

As set forth above, the Stop Loss Policy covers “losses paid during the policy year,” which runs from April 1, 2003 through March 31, 2004. “Losses” means amounts “paid” by either ALIG or its Administrator, IBC/BCBST, during the “benefit period.” The “benefit period” includes eligible expenses both “incurred” and “paid” “through March 31, 2004.” There is no dispute between the parties that the Texas Claim was incurred before March 31, 2004, since the patient died March 15th of that year. There is, however, a dispute as to whether the Texas Claim had to be “paid” in order for there to be coverage under the Stop Loss Policy.

The general definition of “benefit period” is the period of time “during which a covered expense must be incurred, and/or paid to be eligible for reimbursement.” The use of the disjunctive along with the conjunctive raises the possibility that only one act, either incurring or paying a claim, and not both, must be accomplished within the benefit period for there to be coverage.¹⁹ However, “the specific controls the general when interpreting a contract.”²⁰ The definition of “benefit period” specific to ALIG’s Stop Loss Policy, to which the general

¹⁸ Madison Const. Co. v. Harleysville Mut. Ins. Co., 557 Pa. 595, 608, 735 A.2d 100, 108 (1999).

¹⁹ This phrasing may have been chosen because the generic definition of “benefit period” is used in different types of stop loss policies issued by SSLI. At least three kinds of stop loss policies have been identified by another court, each of which has different requirements as to when a claim must be incurred and/or paid to be covered:

Paid Policy – some claims incurred before the effective date of the policy may be covered, so long as they are paid within the 12 month policy period.

12/15 Policy – claims incurred within the 12 month policy period and paid within 3 months after the policy expires are covered.

Incurred and Paid Policy – only claims that are incurred and paid within the 12 month policy period are covered.

Frith v. Comprehensive Benefits Services, 1993 U.S. Dist. LEXIS 13136, *12 (E. D. Pa. 1993).

If ALIG had purchase one of the “12/15” policies mentioned in Frith, ALIG would clearly have obtained the coverage it seeks in this action, albeit the premium for such a policy may have been different than the one ALIG paid for the Policy it purchased.

²⁰ Trombetta v. Raymond James Fin. Servs., 907 A.2d 550, 560 (Pa. Super. 2006)

definition defers, makes clear that a claim must be both incurred “and” paid within the enumerated time frames in order for it to be covered under this particular Stop Loss Policy.

The parties also dispute whether the Texas Claim was, in fact, “paid” as required by the Stop Loss Policy. As set forth in the Policy, a claim is not “paid,” unless it has been “adjudicated” by IBC, and unless ALIG has “actually disbursed” funds to cover the claim. Both events must occur before the “benefit period” expires. The Texas Claim was approved, or “adjudicated,” by IBC on March 29th, two days before the end of the “benefit period.” On that same day, IBC instructed BCBST to pay the Texas Claim and to charge IBC’s account for the full amount of the Claim. On March 30th, ALIG wired, or “disbursed,” funds to IBC to cover the Texas Claim. By doing so, IBC and ALIG clearly satisfied the adjudication and disbursement requirements for “payment” of the Texas Claim. However, SSLI argues that they failed to satisfy the final requirement set forth in the Stop Loss Policy’s definition of “PAID.”

Under the express terms of the Stop Loss Policy, the Texas Claim cannot be deemed “paid” until ALIG or its Administrator, IBC/BCBST, has “directly made” or “tender[ed]” payment to the Texas hospital that submitted the Texas Claim. As further delineated in the Policy, “payment” is “made” or “tendered” when ALIG or its Administrator, IBC/BCBST, “mail[s]” or otherwise “deliver[s]”²¹ “a draft or check” to the Texas hospital. To “mail” is “to deposit (a letter, package, etc.) with the U.S. Postal Service; to ensure that a letter, package, etc. is properly addressed, stamped, and placed into a receptacle for mail pickup.”²²

In this case, a “check” was “mailed” to the Texas hospital by BCBST, but not until April 7, 2004, a week after the Policy’s “benefit period” ended. As a result of this delay, the Texas

²¹ For instance, BCBST could have transmitted the check or the funds to the Texas hospital or the hospital’s bank account by electronic means.

²² Black’s Law Dictionary, p. 964 (7th ed. 1999).

Claim was not “paid” within the “benefit period” or “policy year.” Since it was not timely “paid,” the Texas Claim does not constitute a covered “loss” under the Stop Loss Policy.

Therefore, SSLI does not have any obligation under the Stop Loss Policy to reimburse ALIG with respect to the Texas Claim.

ALIG’s claims against IBC and BCBST for failure to issue the check in payment of the Texas Claim on time, and IBC’s claims against ALIG for non-payment of an invoice were not submitted to the panel for decision. As a result of the panel’s ruling on the coverage issue, the stay of all remaining claims is lifted, and the parties shall proceed to litigate those claims.

BY THE COURT:

ALBERT W. SHEPPARD, JR., J.

HOWLAND W. ABRAMSON, J.

MARK I. BERNSTEIN, J.