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

STEVEN C. EISEN, D.C.; ALICE E. WRIGHT, D.C.; DOUGLAS G. PFEIFFER, D.C.; JOHN CECCHINI, D.C.; DEBORAH A. CARL; and SALLY ANN SPALL, on behalf of themselves and all others similarly situated,	:	AUGUST TERM, 2000
Plaintiffs	:	No. 2705
v.	:	COMMERCE PROGRAM
INDEPENDENCE BLUE CROSS, et al.,	:	
Defendants	:	Control No. 120761

OPINION

In this action, plaintiffs seek monetary, injunctive and declaratory relief from the alleged policies and practices of defendants, Independence Blue Cross ("IBC") and its subsidiaries or corporate affiliates, which include holding companies, health maintenance organizations ("HMOs"), third-party administrators of health care plans and insurance agencies, resulting in the denial of coverage and/or reimbursement for purportedly medically necessary chiropractic treatment. Plaintiffs, Stephen C. Eisen, D.C. ("Eisen"), Alice E. Wright, D.C. ("Wright"), Douglas G. Pfeiffer, D.C. ("Pfeiffer"), John Cecchini, D.C. ("Cecchini"), Deborah A. Carl ("Carl") and Sally Ann Spall ("Spall"), have brought this action on behalf of two putative classes: (1) a provider class consisting of all chiropractors who serve as in-network providers of chiropractic care to IBC subscribers through a standard contract; and (2) a subscriber class who are or were subscribers of health care plans operated or administered by IBC and/or its affiliates.

Presently before this court is the Motion for Summary Judgment of Defendants, AmeriHealth, Inc., AmeriHealth Integrated Benefits, Inc. f/k/a American Health Alternatives, AmeriHealth

Administrators, Inc., Healthcare Delaware, Inc., Vista Health Plan, Inc., and Keystone Health Plan East, Inc. ("moving defendants).[1] The moving defendants assert that neither the subscriber plaintiffs nor the provider plaintiffs can establish their breach of contract claims because they lack contractual privity with these defendants. Similarly, the moving defendants assert that the subscriber plaintiffs lack standing to sue under the Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL").[2]

For the reasons set forth in this Opinion, this court is granting the motion for summary judgment in part in favor of AmeriHealth, Inc., AmeriHealth Integrated Benefits, Inc. f/k/a American Health Alternatives, Healthcare Delaware, Inc. and Vista Health Plan, Inc. against all of the named plaintiffs. The motion for summary judgment is denied as to AmeriHealth Administrators, Inc. and Keystone Health Plan East, Inc.[3]

STATEMENT OF FACTS

The pertinent facts are limited to identifying the relationships and or connections of the named parties to one another since the lack of contractual privity and the issue of standing are disputed in the present motion. The remaining claims in this matter are limited to breach of the express terms of the

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[1]The non-moving defendants, who remain in the case in any event, are Independence Blue Cross, AmeriHealth Insurance Company and QCC Insurance Company.

[2]The UTPCPL is codified at 73 P.S. §§ 201-1 et seq.

[3]Since this court has not yet ruled on the plaintiffs' Motion for Class Certification, the ruling on the Motion for Summary Judgment is not binding on either putative class but only on the named parties. See Bruck v. Pennsylvania Nat'l Ins. Companies, 672 A.2d 1335, 1336 (Pa. Super. Ct. 1996); Canulli v. Allstate Ins. Co., 315 Pa. Super. 460, 467, 462 A.2d 286, 289 (1983). See also, Pa. R. Civ. P. 1715(a)("summary judgment may [not] be entered in favor or against the class until the court has certified or refused to certify the action as a class action.").

contract on behalf of the provider plaintiffs, breach of the contract and or the implied covenant of good faith on behalf of the subscriber plaintiffs, and a violation of Sections 201-2(4)(v), (vii), (ix) or (xiv) of the UTPCPL on behalf of the subscriber plaintiffs. See Pennsylvania Chiropractic Ass'n., et al. v. Independence Blue Cross, et al., August 2000, No. 2705 (C.P. Phila. July 16, 2001)(Herron, J.)(ruling on the preliminary objections in this matter).

The two named subscriber plaintiffs are Deborah A. Carl ("Carl") and Sally Ann Spall ("Spall"). Prior to filing the class action complaint, Carl had been a subscriber of Personal Choice, a QCC Insurance Company ("QCC") health care plan, which was provided through her employer, Montgomery County Court House. Am. Compl., ¶ 15; Carl Dep. at 19.[4] As a government-sponsored health care plan, Personal Choice, which is under the umbrella of IBC, is exempt from the Employee Retirement Security Income Act of 1974 ("ERISA"). Am. Compl., ¶ 15. The relevant 1998 contract with Montgomery County Court House identifies QCC as the carrier for the Personal Choice Group. See Defs. Mot. for Summ. J., Exhibit A. Additionally, Spall had been a subscriber to Personal Choice through her husband's employer, the Upper Perkiomen, Pennsylvania School District. Am. Compl., ¶ 16; Spall Dep. at 9-16.[5] Ms. Spall testified that she was not a subscriber to another plan during the relevant time period. Spall Dep. at 16. The relevant 1998 contract with the Upper Perkiomen School District also identifies QCC as the carrier for the Personal Choice Group. See Defs. Mot. for Summ. J., Exhibit A. Further, the standard contract describing the Personal Choice Program identifies only

[4]Carl's deposition transcript was attached at Exhibit E, as part of an appendix to defendants' Brief in Opposition to plaintiffs' Motion for Class Certification. The other named plaintiffs' deposition transcripts are also attached at separate exhibits in the aforesaid appendix.

[5]Spall's deposition transcript is attached at Exhibit F to the aforesaid appendix.

QCC as the carrier for the "Group Contract" and states that QCC is a subsidiary of IBC. Am. Compl., Exhibit B. Neither Carl nor Spall identified any other insurance company or policy to which they subscribed other than Personal Choice.[6]

The named provider plaintiffs are Steven C. Eisen, D.C. ("Eisen"), Alice E. Wright, D.C. ("Wright"), Douglas G. Pfeiffer, D.C. ("Pfeiffer") and John Cecchini, D.C. ("Cecchini"). All of these providers have purportedly treated chiropractic patients including IBC subscribers, pursuant to a standard or "form" contract. Am. Compl., ¶¶ 10-14. The form contract, referred to as the "Professional Provider Agreement" and listed as the "individual agreement", states in pertinent part that:

> This Professional Provider Agreement ("Agreement") is made and entered into by and between "Provider," as named on the execution page to this Agreement, and AmeriHealth Insurance Company, AmeriHealth HMO, Inc., and Keystone Health Plan East, Inc. (collectively referred to herein as "Independence").

Am. Compl., Exhibit A; and Pls. Opposition to Defs. Mot. for Summ. J., Exhibit I. Further, the PPO Individual Agreement notes that it is between the "'Provider', as named on the execution page ... and AmeriHealth Insurance Company (referred to as "Independence")." Pls. Opposition to Defs. Mot. for Summ. J., Exhibit H. The recitals in the form agreement also state that:

> Independence is part of a network of preferred provider organizations (PPOs), insurance companies, and third party administrators (TPAs) (hereinafter referred to as Affiliates and defined herein), which administer Benefit Programs of all types. Unless otherwise specified in this Agreement or any other attachment thereto, references to "Independence" shall include Independence Blue Cross and its Affiliates, listed in Exhibit A of this Agreement.

Pls. Opposition to Mot. for Summ. J., Exhibits H & I at 1. Independence Blue Cross and its

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[6]At present, Carl works for Harleysville Insurance Company, where her health care plan is under Keystone Health Plan East, Inc. Carl Dep. at 10-12.

"Affiliates" are listed as Independence Blue Cross, AmeriHealth HMO, Inc., Keystone Health Plan East, Inc. AmeriHealth Insurance Company, AmeriHealth Insurance Company of New Jersey, Keystone Mercy Health Plan, HealthCare Delaware, Inc., Keystone Health Systems, AmeriHealth Integrated Benefits, Inc. d/b/a AmeriHealth Administrators, Blair Mill Administrators and CompServices, Inc. Id. at Exhibit A. Both the moving and non-moving defendants share the same address as their principal places of business at 1901 Market Street, Philadelphia, PA 19103. Am Compl., ¶ 20(a)-(i); Pls. Opp. to Defs. Mot. for Summ. J., Exhibits A, C & D.

None of the provider plaintiffs attached an agreement with an execution page to the complaint or to any of their subsequent pleadings. However, Eisen testified that he treats patients under the following IBC health care plans: Personal Choice, Keystone Health Plan East and AmeriHealth. Eisen Dep. at 36-37.[7] As part of the discovery in this case, Eisen only ran a search for records for Personal Choice and Keystone, as the "bulk" of the IBC subscribers whom he sees. Id. at 39-40. Eisen also testified that he did not know whether he treated patients insured by HealthCare Delaware, Inc., American Health Alternatives, Vista Health Plan, AmeriHealth Administrators or AmeriHealth Insurance Company. Id. at 40-41. As to AmeriHealth, Eisen did not distinguish between any of the companies which begin with that name. Id. There is evidence that Eisen had dealings with AmeriHealth Administrators who certified or limited certification for treatment of certain of Eisen's patients. Smalley Aff., Exhibits B, C & D. Eisen's offices are located at Roxborough Chiropractic Center, 6816 Ridge Avenue, Philadelphia, Pennsylvania 19128-2445. Am. Compl. & Answer, ¶ 10.

Wright does business as "Quality Care Physicians", 51 Orvilla Road, Hatfield, Pennsylvania

[7]Eisen's deposition transcript is attached at Exhibit B to the aforesaid appendix.

19440. Am. Compl. & Answer, ¶ 11; Wright Dep. at 9.[8] Wright testified that she is a provider for Personal Choice and "Keystone when a patient can get a referral", but she only ran a search for records for Personal Choice. Id. at 13-14, 48. Wright also testified that she believed that she or members in her practice treated patients who used AmeriHealth Administrators, but she could not name any of these patients during her deposition. Id. at 165.

Pfeiffer treats patients, including IBC subscribers at his offices located at the Upper Perkiomen Chiropractic Center, 1543 Layfield Road, Pennsburg, Pennsylvania 18703-0045. Am. Compl. & Answer, ¶ 12. Pfeiffer testified that he is only a participating provider for Personal Choice and he does not provide "in-network" coverage for patients under Keystone Health Plan East. Pfeiffer Dep. at 20, 84.[9] Pfeiffer also testified that some of his patients have AmeriHealth coverage because his practice uses AmeriHealth's specific coding for chiropractic procedures, but he could not specifically name any patients or clarify which of the AmeriHealth entities he meant. Id. at 93-94. Pfeiffer did not testify that he had any dealings with the other named defendants.

Lastly, Cecchini treats IBC subscribers out of his offices located at the Apple Chiropractic Center, 2800 Route 130 North, Suite 102, Cinnaminson, New Jersey 08077. Am. Compl. & Answer, ¶ 13. Cecchini testified that he was unaware of seeing patients who were covered by QCC, Vista Health Plan, Inc., American Health Alternatives, Inc. and Keystone Health Alternatives. Cecchini Dep. at 85, 141-42.[10] However, he also testified that he knew treatment was given to patients under

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[8]Wright's deposition transcript is attached at Exhibit D to the aforesaid appendix.

[9]Pfeiffer's deposition transcript is attached at Exhibit C to the aforesaid appendix.

[10]Cecchini's deposition transcript is attached at Exhibit A to the aforesaid appendix.

Keystone Health Plan East. Id. at 142. His testimony did not clarify whether Keystone Health Alternatives was the same entity as Keystone Health Plan East. However, additional documentation supports that Cecchini treated patients under Keystone Health Plan East. Smalley Aff., Exhibits A, G & I. Further, similar documents show that Cecchini through Apple Chiropractic Center treated patients who subscribed or were network members of AmeriHealth Administrators, Inc. Smalley Aff., Exhibit A.

As to AmeriHealth Administrators, Inc., defendants assert that this entity merely provides third-party administrative services to self-funded health care plans and applies the criteria for coverage provided to it by those plans. Gannon Aff., ¶¶ 2-3.[11] Further, defendants aver that AmeriHealth, Inc., AmeriHealth Integrated Benefits, Inc. f/k/a American Health Alternatives, and Vista Health Plan do not provide any health insurance or HMO coverage, nor do they accept or pay claims. Eskridge Aff., ¶ 4.[12] Other than AmeriHealth Administrators, plaintiffs present no evidence which would contradict defendants' assertion as to AmeriHealth, Inc., AmeriHealth Integrated Benefits, Inc. f/k/a American Health Alternatives and Vista Health Plan. Additionally, none of the named plaintiffs appear to have any connection, contractual or otherwise, to Healthcare Delaware, Inc.

With these facts, this court must now analyze the moving defendants' Motion for Summary Judgment on the subscriber plaintiffs' claims in Count I (breach of contract and/or breach of the implied duty of good faith) and Count III (violation of the UTPCPL) and the provider plaintiffs' claims for

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[11]The Affidavit of George Gannon, President and Chief Executive Officer of AmeriHealth Administrators, is attached at Exhibit C to Defs. Mot. for Summ. J.

[12]The Affidavit of Karen Eskridge is attached at Exhibit B to Defs. Mot. for Summ. J.

breach of contract in Count I of the First Amended Complaint.

DISCUSSION

Under the Pennsylvania Rules of Civil Procedure, the court must grant summary judgment if (1) there is no genuine issue of any material fact as to a necessary element of the cause of action or defense that could be established by additional discovery or expert report, or (2) after the completion of discovery, a party bearing the burden of proof on an issue has failed to produce evidence of facts essential to the cause of action or defense such that a jury could return a verdict in his favor. Pa. R. Civ. P. 1035.2. The moving party has the burden to prove that there is no genuine issue of material fact. Hagans v. Constitution State Serv. Co., 455 Pa. Super. 231, 254, 687 A.2d 1145, 1156 (1997). Once the moving party meets this burden, the non-moving party must set forth specific facts showing that there is a genuine issue for trial. Id. at 254, 687 A.2d at 1156. The trial court's function is to determine whether there are controverted issues of fact, not whether there is sufficient evidence to prove the particular facts. Id. at 254, 687 A.2d at 1157. A motion for summary judgment must be viewed in the light most favorable to the non-moving party, and all doubts as the existence of a genuine issue of material fact must be resolved against the moving party. Pennsylvania State University v. County of Centre, 532 Pa. 142, 145, 615 A.2d 303, 304 (1992). Only where there is no genuine issue as to any material fact and it is clear that the moving party is entitled to judgment as a matter of law will summary judgment be entered. Skipworth v. Lead Industries Ass'n., Inc., 547 Pa. 224, 230, 690 A.2d 169, 171 (1997).

In support of their Motion for Summary Judgment, the moving defendants assert that both the subscriber plaintiffs and the provider plaintiffs lack standing to sue for either breach of contract or a

violation of the UTP/CPL because there is no privity of contract between either class of plaintiffs and the moving defendants. Further, the moving defendants assert that the "[p]rovider [p]laintiffs have failed to put forth a shred of evidence that they ever dealt with any of the [m]oving [d]efendants." Defs. Reply Mem. in Support of Mot. for Summ. J., at 4.

Plaintiffs, in turn, rely on an "alter ego" theory of liability to assert that they have standing to sue all of the named defendants, on the grounds that IBC and all of its corporate affiliates or subsidiaries act as a single entity and engage in the same practices complained of in this action. Plaintiffs had relied on these same arguments in a Motion for a Continuance to Conduct Discovery. However, this court denied the Motion for a Continuance. Similarly, this court must grant the Motion for Summary Judgment as to four of the six moving defendants since the named plaintiffs do not have standing to sue these four defendants.

As a threshold matter, a party seeking judicial resolution of a controversy must first establish that he or she has standing to maintain the action. Nye v. Erie Ins. Exch., 579 Pa. 3, 5, 470 A.2d 98, 99(1983); Treski v. Kemper Nat'l Ins. Cos., 674 A.2d 1106, 1111 (Pa. Super. Ct. 1996); D'Amelio v. Blue Cross of Lehigh Valley, 414 Pa. Super. 310, 314, 606 A.2d 1215, 1217 (1992). Generally, to have standing, a party must satisfy the following test:

> [O]ne . . . must show a direct and substantial interest and a sufficiently close causal connection between the challenged action and the asserted injury to qualify the interest as "immediate" rather than "remote." . . . [A] substantial interest requires some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law. Direct simply means that the person claiming to be aggrieved must show causation of the harm to his interest . . . . The immediacy or remoteness of the injury is determined by the nature of the causal connection between the action complained of and the injury to the person challenging it.

DeFazio v. Civil Serv. Comm'n. of Allegheny County, 562 Pa. 431, 434, 756 A.2d 1103. 1105 (2000)(citations omitted). See also, J.A.L. v. E.P.H., 453 Pa. Super. 78, 86, 682 A.2d 1314, 1318 (1996)("the proponent of the action must have a direct, substantial and immediate interest in the matter at hand.").

The same standing rules apply for a class action plaintiff and require a causal connection between the named plaintiff and the named defendants, even where different defendants are alleged to engage in the same behavior complained of in the action. See, e.g., Nye, 504 Pa. at 5-6, 470 A.2d at 99-100 (holding that appellee Nye lacks standing to maintain an action against the other defendant insurance companies, other than Erie Insurance Exchange, because the complaint failed to allege that Nye had been aggrieved by these insurance companies); Treski, 674 A.2d at 1112-1113 (holding that named insureds were not aggrieved parties because they had not been denied full tort recovery in New Jersey and thus lack standing to maintain class action asserting a violation of the UTPCPL against the named insurance companies); D'Amelio, 414 Pa. Super. at 315-316, 606 A.2d at 1217-1218 (holding that while the named plaintiff had standing to represent all persons who were aggrieved by similar rulings of Blue Cross of Lehigh Valley with respect to medical treatment rendered by St. Luke's hospital, he lacked standing to bring an action against different hospitals who did not engage in the conduct which contributed to his injury). See also, Janicik v. the Prudential Ins. Co. of America, 305 Pa. Super. 120, 135, 451 A.2d 451, 458 (1982)(quoting Sosna v. Iowa, 419 U.S. 393, 403 (1975))(a class action plaintiff may only satisfy the requirements of standing when he or she is "a member of the class which he or she seeks to represent at the time the class is certified by the court."); Alessandro v. State Farm Mut. Auto. Ins. Co., 259 Pa. Super. 571, 580, 393 A.2d 973, 977 (1978), aff'd in part,

rev'd in part on other grounds, 487 Pa. 274, 409 A.2d 347 (1979)("[i]f the representative before the court does not seek to raise on his own behalf a case or controversy substantially alike those of the absent members of the class, he lacks standing to act as a class representative.").

Further, "it is fundamental contract law that one cannot be liable for a breach of contract unless one is a party to that contract." Electron Energy Corp. v. Short, 408 Pa. Super. 563, 571, 597 A.2d 175, 178 (1991)(holding that corporate president cannot be liable for breach of contract where he is not a party to the contract). See also, Fleetway Leasing Co. v. Wright, 697 A.2d 1000, 1003 (Pa. Super. Ct. 1997)("a person who is not a party to a contract cannot be held liable for breach by one of the parties to a contract"); Commonwealth v. Noble C. Quandel Company, 137 Pa. Commw. 252, 260, 585 A.2d 1136, 1140 (1991)(same).

Additionally, a parent corporation is not normally liable for the contractual obligations of its subsidiary, even if that corporation is its wholly-owned subsidiary. Norbers v. Crucible, Inc., 602 F.Supp. 703, 706 (W.D.Pa. 1985)(citation omitted). "Such liability occurs only by application of the 'alter ego' theory to pierce the corporate veil." Id. See also, Commonwealth v. Vienna Health Prods., Inc., 726 A.2d 432, 434 (Pa. Commw. Ct. 1999)("a corporation is to be treated as a separate and independent entity even if its stock is owned entirely by one person."); Shared Communications, Servs. of 1800-80 JFK Blvd., Inc. v. Bell Atlantic Props., Inc., 692 A.2d 570, 573 (Pa. Super. Ct. 1997)("[a]lthough a parent and a wholly owned subsidiary do share common goals, they are still recognized as separate and distinct legal entities."). There is a strong presumption against piercing the corporate veil. Lumax Indus., Inc. v. Aultman, 543 Pa. 38, 41-42, 669 A.2d 893, 895 (1995). The general standard for piercing the corporate veil is "when the court must prevent fraud, illegality, or

injustice, or when recognition of the corporate entity would defeat public policy or shield someone from liability for a crime." Id. (quoting Zubik v. Zubik, 384 F.2d 267, 272 (3d Cir. 1967), *cert. denied*, 390 U.S. 988 (1968). See also, Kiehl v. Action Mfg. Co., 517 Pa. 183, 190, 535 A.2d 571, 574 (1987)(adhering to the same standard for piercing the corporate veil); Village At Camelback Property Owners Ass'n, Inc. v. Carr, 371 Pa. Super. 452, 461, 538 A.2d 528, 532-33 (1988)(relating the same standard as it applies to shareholders of the corporation).

Plaintiffs' reliance on the "alter ego" theory to pierce the corporate veil, on the premise that IBC and its corporate affiliates operate as a single entity, is not sufficient to establish Plaintiffs' standing to sue the Defendants who have not injured the Plaintiffs or with whom the Plaintiffs have no contractual or other relationship. The cases relied on by Plaintiffs do not support their position but only set forth the standard for piercing the corporate veil.[13] Rather, Plaintiffs seem to misapply the alter ego theory since it is applied only in special and unusual circumstances to reach the parent corporation which wholly

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[13]See, S.T. Hudson Eng'rs., Inc. v. Camden Hotel Dev. Assocs., 747 A.2d 931, 935-936 (Pa. Super. Ct. 2000)(applying alter ego theory to hold corporate president and corporation/ controlling partner liable on a breach of contract claim where the evidence showed that the corporate president was also the sole shareholder, sole officer and sole employee of the corporation, no formal partnership agreement was in effect at any time, and some payments to engineering firm were drawn on president's personal account); Truth Freewill Baptist Church v. Berwick Township, 26 Pa. D. & C.4th 130, 140-141 (C.P. Adams County Nov. 17, 1995) (denying summary judgment on the issue of whether the individual shareholders may be held liable for road repairs and maintenance where many corporate records and deeds of real estate transactions are missing and the credibility of witnesses will be critical to determine if the veil can be pierced); Ferrante v. Hub Mohawk Motor Inc and Treadway Cos., Inc., 6 Phila. Co. Rptr. 172, 180-83 (C.P. Phila. June 19, 1981) (piercing the corporate veil to hold the parent corporation liable for the contractual damages of its subsidiary where the evidence supported that the parent wholly owned and controlled its subsidiary, the transactions and negotiations took place at the parent's corporate offices, the parent's corporate officers participated in the negotiations, all of the subsidiary's banking took place in the town where the parent was located, and the plaintiff was unaware of the intercorporate relations among the defendants).

controls the subsidiary and ignores corporate formalities or it is applied to the principal owner/shareholder. Nevertheless, in this case, the parent or principal "controller" would be IBC which remains a defendant in this case.

Moreover, Plaintiffs' reliance on this Court's decision in Parsky v. First Union Corp., 51 Pa. D. & C.4th 468 , 2001 WL 535786 (C.P. Phila. May 8, 2001)(Herron, J.) is also unpersuasive. In Parsky, this Court certified the class action where the same defendant allegedly engaged in similar conduct toward beneficiaries under different trust funds, including trust funds in which the named plaintiffs did not invest. 2001 WL 535786 at *14-15. Similarly, the court in Selby v. Principal Mut. Life Ins. Co., 197 F.R.D. 48, 64-65 (S.D.N.Y. 2000) certified one of the three putative classes where the single defendant purportedly engaged in improper conduct under different health plans in violation of ERISA. Unlike those two cases, the instant matter involves different corporate defendants and the named plaintiffs do not have any connection with some of these defendants.

Here, there is no evidence of any contract or other dealings between any of the named plaintiffs and AmeriHealth, Inc., AmeriHealth Integrated Benefits, Inc. f/k/a American Health Alternatives, Healthcare Delaware, Inc. or Vista Health Plan, Inc. Further, the two named subscribers only had plans with QCC Insurance Company but had no contractual or other relationship with any of the moving defendants. See Carl Dep. at 19; Spall Dep. at 9-16. However, the evidence did establish that Eisen and Cecchini had provided treatment to subscribers to Keystone Health Plan East and AmeriHealth Administrators, Inc. See Eisen Dep. at 36-37, 39-40; Cecchini Dep. at 142; and Smalley Aff., Exs. A, B, C & D. Whether such treatment resulted in the denial of reimbursement is an issue of fact which cannot be resolved by the present motion since discovery on the full merits has not yet taken

place. There is also a genuine issue of material fact regarding whether AmeriHealth Administrators, Inc. engaged in the conduct complained of in this action or whether it merely provides third party administrative services. See Gannon Aff., ¶¶ 2-3. Further, Wright may also have provided treatment to Keystone and AmeriHealth patients. See Wright Dep. at 13-14, 48, 165. However, Pfeiffer did not provide treatment to Keystone patients. See Pfeiffer Dep. at 20, 84. In light of the evidence and the present record, this Court finds that the named plaintiffs have not established a causal connection between themselves and AmeriHealth, Inc., AmeriHealth Integrated Benefits, Inc. f/k/a American Health Alternatives, Healthcare Delaware, Inc. or Vista Health Plan, Inc. and could not have been aggrieved by these defendants despite the allegation that these defendants all engaged in same or similar pattern of improper conduct which resulted in the denial of reimbursement or coverages for purportedly medically necessary treatment. Nevertheless, the evidence did show a sufficient connection between Eisen, Cecchini and Wright and Keystone Health Plan East and AmeriHealth Administrators, Inc. Therefore, summary judgment may not be granted as to those defendants.

CONCLUSION

For the reasons stated above, this Court is granting the Motion for Summary Judgment as to Defendants, AmeriHealth, Inc., AmeriHealth Integrated Benefits, Inc. f/k/a American Health Alternatives, Healthcare Delaware, Inc. or Vista Health Plan, Inc. However, the Motion for Summary Judgment is denied as to Keystone Health Plan East and AmeriHealth Administrators, Inc.

BY THE COURT,

JOHN W. HERRON, J.

Dated: May 6, 2002

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

STEVEN C. EISEN, D.C.; ALICE E. WRIGHT, D.C.; DOUGLAS G. PFEIFFER, D.C.; JOHN CECCHINI, D.C.; DEBORAH A. CARL; and SALLY ANN SPALL, on behalf of themselves and all others similarly situated,	:	AUGUST TERM, 2000
	:	No. 2705
Plaintiffs	:	COMMERCE PROGRAM
v.	:	
INDEPENDENCE BLUE CROSS, et al.,	:	
Defendants	:	Control No. 12076

ORDER

AND NOW, this 6th day of May , 2002, upon consideration of the Motion for Summary Judgment of Defendants AmeriHealth, Inc., AmeriHealth Integrated Benefits, Inc. f/k/a American Health Alternatives, AmeriHealth Administrators, Inc., Healthcare Delaware, Inc., Vista Health Plan, Inc., and Keystone Health Plan East, Inc. ("Moving Defendants), Plaintiffs' response in opposition thereto, all other matters of record, and in accord with the Opinion being filed contemporaneously with this Order, it is hereby **ORDERED** that the Motion for Summary Judgment is **Granted in part** as to Defendants, AmeriHealth, Inc., AmeriHealth Integrated Benefits, Inc. f/k/a American Health Alternatives, Healthcare Delaware, Inc., Vista Health Plan, Inc. It is further **ORDERED** that the Motion for Summary Judgment is **Denied in part** as to Defendants AmeriHealth Administrators, Inc. and Keystone Health Plan East.

BY THE COURT,

JOHN W. HERRON, J.