IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

STEPHEN L. CORSON, M.D., BENJAMIN GOCIAL, M.D., JACQUELINE N. GUTMANN, M.D., and DEAN E. BURGET, JR., M.D., on behalf of themselves individually and all others similarly situated, Plaintiffs	:	DECEMBER TERM, 2000
	:	No. 2148
v.	:	COMMERCE CASE PROGRAM
INDEPENDENCE BLUE CROSS, Defendant	:	Control No. 031598

OPINION

Presently before this court are the Preliminary Objections of defendant, Independence Blue Cross ("IBC") to the First Amended Complaint ("Complaint") in this class action filed by plaintiffs, Stephen L. Corson, M.D. ("Dr. Corson"), Benjamin Gocial, M.D. ("Dr. Gocial"), Jacqueline N. Gutmann, M.D. ("Dr. Gutmann") and Dean E. Burget, Jr., M.D. ("Dr. Burget").

For the reasons set forth, the Preliminary Objections are **sustained**.

BACKGROUND

The operative facts, set forth in the Complaint, are as follows.[1] Plaintiffs, Drs. Corson, Gocial, Gutmann and Burget, bring this action on behalf of themselves individually, and all other hospitals, physicians, physician organizations and other health care practitioners, who, pursuant to a contractual

[1]The Complaint is attached as Exhibit A to defendant's Preliminary Objections. References in this Opinion to "Exhibits" are those exhibits attached to the Preliminary Objections.

relationship with IBC, provide covered and/or emergency medical services, procedures and/or products to individuals eligible to receive such benefits pursuant to health insurance contracts, health maintenance organizations ("HMOs"), preferred provider organizations ("PPOs") or point of service ("PS") health plans. Am.Compl. at ¶¶ 1, 13-16, 44. In exchange for providing these services, plaintiffs were to receive reimbursement by submitting claims to IBC. Id. at ¶ 1. Defendant, IBC, operates and/or maintains certain health care programs, including but not limited to health insurance contracts, HMOs, PPOs and PS programs. Id. at ¶ 2. Pursuant to the Complaint, IBC is intended to include its affiliates, as well as any corporation or other organization, owned or controlled, either directly or through parent or subsidiary corporations by IBC.[2] Id. at ¶ 17.

The contracts entered into by IBC and the plaintiffs, who represent "Contracting Healthcare Providers," are purportedly uniform in obligating the health care provider to render health care services to all eligible IBC beneficiaries regardless of the health care program to which the beneficiary belongs. Id. at ¶ 4. Each of the named plaintiffs entered into these contracts with IBC on separate dates in 1997. Id. at ¶¶ 22-28. See Am.Compl., Exhibits A-G. In addition, the contracts are uniformly alike in dictating the method of reimbursement by which IBC agrees to pay the health care provider through a "claim" process in accordance with a "reimbursement schedule" less any applicable co-payment. Id. at ¶¶ 5-6. IBC relies on a set of codes to identify the array of medical services, procedures and products that can be rendered to persons receiving medical treatment. Id. at ¶ 7. By agreement with the plaintiffs, IBC most commonly utilizes the set of codes known as the Current Procedural Terminology ("CPT"), which is compiled by the

[2]None of these affiliates, corporations or other organizations are explicitly named as defendants in the present case.

American Medical Association. Id. Each health care provider prepares claims based on CPT codes and submits these claims to IBC for reimbursement. Id. at ¶ 8.

IBC has allegedly engaged in a pattern and/or practice of "down-coding," which results in reimbursing claims for fewer than all of the medical services rendered or reimbursement at a lower cost code than the code submitted regardless of the medical service rendered to the eligible IBC beneficiary, and/or "bundling" of claims which employs the methodology of eliminating related, covered or emergency medical services to render payment for only one element of the covered or emergency service. Id. at ¶¶ 10, 12(b),(h). This down-coding logic was allegedly designed to deny, limit, minimize or otherwise improperly reduce the amount of reimbursement of claims due under IBC's contracts with its health care providers. Id. at ¶ 34. This down-coding methodology for processing of claims is not included under the terms of the contracts, nor was it disclosed by IBC to the health care providers. Id. at ¶¶ 11, 35. By utilizing down-coding methodologies and/or software, IBC denied payment of claims in various incidents and such denial were not based on whether the services were not in fact rendered, whether the services were not medically necessary or appropriate, whether the services were not rendered in the most cost-effective possible manner or any other basis for denying payment which is consistent with the contracts. Id. at ¶ 42.

With this background, plaintiffs filed their class action Complaint, setting forth counts for breach of contract and quantum meruit, requesting monetary, injunctive and declaratory relief. IBC filed Preliminary Objections, asserting that both counts are insufficiently specific, setting forth a demurrer to each

count, and objecting to the failure to attach numerous documents forming a basis for the claims.[3]

LEGAL STANDARD

A. Demurrer

Rule 1028(a)(4) of the Pennsylvania Rules of Civil Procedure [Pa.R.C.P.] allows for preliminary objections based on legal insufficiency of a pleading or a demurrer. When reviewing preliminary objections in the form of a demurrer, "all well-pleaded material, factual averments and all inferences fairly deducible therefrom" are presumed to be true. Tucker v. Philadelphia Daily News, 757 A.2d 938, 941-42 (Pa.Super.Ct. 2000). Preliminary objections, whose end result would be the dismissal of a cause of action, should be sustained only where "it is clear and free from doubt from all the facts pleaded that the pleader will be unable to prove facts legally sufficient to establish [its] right to relief." Bourke v. Kazara, 746 A.2d 642, 643 (Pa.Super.Ct. 2000)(citation omitted). However, the pleaders' conclusions of law, unwarranted inferences from the facts, argumentative allegations, or expressions of opinions are not considered to be admitted as true. Giordano v. Ridge, 737 A.2d 350, 352 (Pa.Commw.Ct. 1999), aff'd. 559 Pa. 283, 739 A.2d 1052 (1999), cert. denied, 121 S.Ct. 307 (U.S. 2000).

B. Insufficient Specificity

Preliminary objections may also be brought based on insufficient specificity in a pleading.

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[3]In their response, plaintiffs argue that defendant waived any objection to plaintiffs' request for injunctive or declaratory relief by failing to raise this issue. This court finds no merit in this argument since, in the event that the court dismissed the Complaint in its entirety, plaintiffs' requested relief would also be stricken. See also Pa.R.C.P 1032(a)(stating "[a] party waives all defenses and objections which are not presented either by preliminary objection, answer or reply, except . . . the defense of failure to state a claim upon which relief can be granted.")(emphasis added). Here, the question of whether plaintiffs may or may not be entitled to their requested relief is not presently before this court.

Pa.R.C.P. 1028(a)(3). Rule 1019(a) requires the plaintiff to state "[t]he material facts on which a cause of action . . . is based . . . in a concise and summary form." Pa.R.C.P. 1019(a). This rule requires that the complaint give notice to the defendant of an asserted claim and synopsize the essential facts to support the claim. Krajsa v. Keypunch, Inc., 424 Pa.Super. 230, 235, 622 A.2d 335, 357 (1993). In addition, "[a]verments of time, place and items of special damage shall be specifically stated." Pa.R.C.P. 1019(f). To determine if a pleading meets Pennsylvania's specificity requirements, a court must ascertain whether the facts alleged are "sufficiently specific so as to enable [a] defendant to prepare [its] defense." Smith v. Wagner, 403 Pa.Super. 316, 319, 588 A.2d 1308, 1310 (1991)(citation omitted). "In this Commonwealth, the pleadings must define the issues and thus every act or performance to that end must be set forth in the complaint." Estate of Swift v. Northeastern Hosp. of Philadelphia, 456 Pa.Super. 330, 337, 690 A.2d 719, 723 (1997).

DISCUSSION

A. Count I - Breach of Contract

Defendant sets forth both a demurrer to Count I and objects to this count for lack of specificity. This court sustains the objections to Count I based on insufficient specificity.

To establish a cause of action for breach of contract, the plaintiff must allege (1) the existence of a contract, including its essential terms, (2) a breach of a duty imposed by the contract and (3) resultant damages. CoreStates Bank, N.A. v. Cutillo, 723 A.2d 1053, 1058 (Pa.Super. 1999)(citations omitted). Further, "[w]hile not every term of a contract must be stated in complete detail, every element must be specifically pleaded." Id. at 1058.

Here, plaintiffs alleged the existence of a contract between themselves and IBC, which requires

each of the plaintiffs, as health care providers, to render medical services to eligible beneficiaries in exchange for reimbursement by IBC. Am.Compl. at ¶¶ 4-6. Plaintiffs do allege the date upon which each written contract of a named plaintiff was executed by said plaintiff, but plaintiffs fail to allege whether these contracts remain in effect or the specific term of these contracts.[4] Id. at ¶¶ 22-28. Plaintiffs also alleged that they and the class submitted claims for reimbursement for covered and emergency medical services provided to beneficiaries, in accordance with substantially similar contractual relationships and based upon the use of codes for these services. Id. at ¶¶ 32, 45. Further, plaintiffs allege that notwithstanding the contractual obligation to reimburse plaintiffs, IBC breached its contracts by down-coding claims for reimbursement which is designed to deny, limit, minimize or otherwise improperly reduce the amount of reimbursement of claims due under its contracts. Id. at ¶¶ 34, 53-54. Plaintiffs also provided specific examples of IBC's alleged misconduct, along with the dates that IBC denied reimbursement and IBC's reasons for these denials, with respect to Drs. Corson, Gocial, Gutmann and Burget. Id. at ¶¶ 36-42. Moreover, plaintiffs allege resultant damages by being deprived the full reimbursement to which they are contractually entitled, plus interest, attorneys' fees and costs and request that IBC make restitution for the difference between what plaintiffs were actually reimbursed and what they would have been reimbursed, absent IBC's breach. Id. at ¶ 56.

Despite these allegations, plaintiffs failed to meet the specificity requirements required by Pa.R.C.P. 1019. First, plaintiffs fail to set forth a specific time period for when the alleged "down-coding" or

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[4]While this court recognizes that the provider agreement includes its own "term" provision at section four, plaintiffs should set forth whether the respective agreements remain in place or were in place during the entire period of defendant's alleged misconduct in light of the additional and/or alternative claim for unjust enrichment. See Exhibit B, § 4.

"bundling" occurred. For instance, all the examples of defendant's alleged misconduct are dated from 1999, but the provider agreements are dated from 1997. Therefore, the Complaint leaves open the question of whether the alleged misconduct occurred prior to 1997. It is also unclear exactly which of plaintiffs' claims for reimbursement were subject to the alleged misconduct. In their Complaint, plaintiffs appear to be asking for damages based on each reimbursement claim which was subject to "down-coding," which could result in reimbursement at a lower cost code than the code submitted or payment for only one element of a covered or emergency medical procedure. Am.Compl. at ¶ 10. However, in their brief, plaintiffs argue that their case is that "nothing was paid - $0 - for certain claims, 'regardless' of the fact that services were indeed 'covered'." Pls. Mem. of Law, at 9-10 n.3. Notwithstanding this argument, the allegations in the Complaint appear broader than perhaps what plaintiffs intended. In addition, other than the five specific examples in paragraphs 36 through 42 of the Complaint, plaintiffs do not allege which services were provided, to whom were these services provided, pursuant to which health care plan were these services provided or the other underlying circumstances that would entitle plaintiffs to reimbursement.

Moreover, plaintiffs do not allege exactly upon which contract provision(s) they are relying to show defendant's breach. While this court could speculate that plaintiffs are most likely referring to the "compensation" provisions listed in section 3 of the provider agreements, plaintiffs should, at a minimum, re-plead this count to state upon which provision(s) they are relying and how those provisions were breached. Further, plaintiffs did not specifically set forth how they complied with the contract terms in order to entitle them to reimbursement, nor did plaintiff allege whether there were any conditions to receiving reimbursement. In addition, it is not clear whether certain amounts of reimbursement were paid, whether other amounts remain unpaid, whether the difference between what was paid and what was not

paid constitutes a breach of contract or what those amounts were. For these reasons, the court sustains the Preliminary Objections to Count I without prejudice in order that plaintiffs may amend their allegations.

B. Count II - Quantum Meruit

Defendant demurs to Count II on the grounds that a claim for quantum meruit is inapplicable where the relationship is founded on a written agreement. Defendant also objects that the allegations, which mirror the allegations in Count I, are insufficiently specific. This court sustains the demurrer to Count I, as well as the objections based on insufficient specificity.

Quantum meruit or unjust enrichment is a quasi-contractual doctrine based in equity which requires plaintiffs to establish the following: (1) benefits conferred on defendants by plaintiffs; (2) appreciation of such benefits by defendants; and (3) acceptance and retention of such benefits under such circumstances that it would be inequitable for defendants to retain the benefit without payment of value. Wiernik v. PHH U.S. Mortgage Corp., 736 A.2d 616, 622 (Pa.Super.Ct. 1999), appeal denied, 561 Pa. 700, 751 A.2d 193 (2000).

The Pennsylvania Rules of Civil Procedure permit plaintiffs to plead causes of action in the alternative. See Pa.R.C.P. 1020(c). Further, the complaint is not defective merely because the causes of action are inconsistent or conflicting. Baron v. Bernstein, 175 Pa.Super. 608, 610, 106 A.2d 668, 669 (1954). Plaintiffs may properly plead causes of action for breach of contract and unjust enrichment in the same complaint. See, e.g., J.A. & W.A. Hess, Inc. v. Hazle Township, 465 Pa. 465, 468, 350 A.2d 858, 860 (1976)(holding that trial court erred in refusing to consider unjust enrichment claim along with breach of contract claim); Lampl v. Latkanich, 210 Pa.Super. 83, 88, 231 A.2d 890, 892 (1967). However, it

is true that plaintiffs cannot recover on a claim for unjust enrichment if such claim is based on a breach of a written contract. See Birchwood Lakes Community Ass'n v. Comis, 296 Pa.Super. 77, 442 A.2d 304, 308 (1982); Hershey Foods Corp. v. Ralph Chapek, Inc., 828 F.2d 989, 999 (3d Cir. 1987).

Here, the only relationship between the plaintiffs and IBC appears to be based on an express written contract. Plaintiffs never allege that the contract or its terms were not in effect during the unspecified period when IBC engaged in its alleged misconduct by "down-coding" claims for reimbursement. Therefore, though plaintiffs may generally plead in the alternative, their claim for unjust enrichment is not supported by their allegations. It is true that if no contract is extant, plaintiffs may recover on an unjust enrichment claim in the alternative. However, plaintiffs need to more specifically set forth when the written contracts were in place and whether defendants' alleged misconduct occurred during a time when no contract was in place, and during which time that plaintiffs provided specific medical services for defendants' insureds but were not reimbursed for such services.

For these reasons, the court sustains the Preliminary Objections to Count II without prejudice for plaintiffs to file an amended complaint.

C. Attachment of Documents

Defendant also objects that plaintiffs failed to attach essential documents forming a basis for their claims nor do they allege that the documents are not accessible, in contravention of Pa.R.C.P. 1019(h). While plaintiffs did attach the four provider agreements for each of the named individual plaintiffs to their Complaint, they did not attach any of the claim forms submitted for the specific examples listed in paragraphs 36 through 40 of their Complaint, nor any other claim forms, nor any of the correspondence with IBC explaining why it denied reimbursement or otherwise, nor any other document explaining which

services were provided pursuant to which health care plan. Currently, subsection (i) of Rule 1019 requires a pleader to attach a copy of the writing or material part thereof where a claim or defense is based upon that writing.[5] Pa.R.C.P. 1019(i). Further, a pleader may state that the writing is not accessible, along with the reason and the substance of the writing, in order to comply with the rule. Id. This court recognizes that it may not be necessary to attach each and every denial or reduction of a claim for reimbursement in order to comply with the Pennsylvania Rules of Civil Procedure. However, plaintiffs should, at least, provide the documentation of the five specific examples and should better explain the nature of their claims for reimbursement, the services provides and under which health care plan the claim was submitted.

Therefore, the objection based on failure to attach a writing, based on Pa.R.C.P. 1019(i), is sustained.

CONCLUSION

For the reasons set forth, this court is entering a contemporaneous Order, sustaining the Preliminary Objections to Count I and II of the First Amended Complaint. Additionally, this court sustains the objection for failure to attach a writing, in contravention of Pa.R.C.P. 1019(i). Plaintiffs shall have twenty (20) days from the date of entry of this Opinion and contemporaneous Order to file an Amended Complaint.

BY THE COURT,

[5]Formerly, subdivision (i) was listed as subdividision (h) which was amended in 2000. See Explanatory Comment-2000 to Pa.R.C.P. 1019.

JOHN W. HERRON, J.

Dated: June 15, 2001

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STEPHEN L. CORSON, M.D., BENJAMIN GOCIAL, M.D., JACQUELINE N. GUTMANN, M.D., and DEAN E. BURGET, JR., M.D., on behalf of themselves individually and all others similarly situated, Plaintiffs	:	DECEMBER TERM, 2000
	:	No. 2148
v.	:	COMMERCE CASE PROGRAM
INDEPENDENCE BLUE CROSS, Defendant	:	Control No. 031598

ORDER

AND NOW, this 15th day of June, 2001, upon consideration of defendant's Preliminary Objections, plaintiffs' opposition thereto, the respective memoranda, all other matters of record, having heard oral argument and in accord with the Opinion being filed contemporaneously with this Order, it is hereby **ORDERED** that the Preliminary Objections are **Sustained**.

It is further **ORDERED** that plaintiffs shall file an Amended Complaint within twenty (20) days of the date of entry of this Order.

BY THE COURT,

JOHN W. HERRON, J.