

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO: 2020-CP-12-00207

Alexis Jones,
Plaintiff,
v.
Progressive Northern Insurance Company,
Defendant.

ORDER

RECEIVED

May 03 2023

SC Court of Appeals

This matter comes before the Court on Defendant’s Motion to Alter or Amend the prior Order of this Court, dated August 10, 2020, which granted in part and denied in part the Defendant’s Motion to Dismiss. For the reasons set forth below, the Motion to Alter or Amend the prior Order is granted in part and denied in part.

This lawsuit arises out of Progressive Northern Insurance Company’s (“Progressive Northern”) payment of Plaintiff’s Medical Payments claim under a Progressive Northern auto policy, Policy No. 930693102, issued to Willie Brown. The Complaint alleges that Plaintiff Alexis Jones incurred medical expenses as a result of an October 8, 2019 automobile accident and timely submitted a Medical Payments claim to Progressive Northern. Plaintiff is a Medicaid recipient. In South Carolina, Medicaid has agreements in place with medical service providers wherein the providers have agreed to accept reduced rates as payment-in-full when treating Medicaid recipients. The Complaint alleges that Progressive Northern paid Jones’ Medical Payments claim based on the Medicaid-adjusted rates charged by her medical providers rather than total charges listed on the medical providers’ initial bills.

This action concerns whether Medical Payment benefits under the policy are to be paid: (1) based on the Medicaid-adjusted rates accepted by the medical providers as payment-in-full for the services rendered; or (2) based on the stated amounts listed on the initial bills. The Complaint

alleges the following causes of action: (1) breach of contract; (2) bad faith/breach of the duty of good faith and fair dealing/breach of fiduciary duty; (3) violation of the South Carolina Unfair Trade Practices Act; (4) violation of South Carolina Code § 38-77-144; and (5) and breach of contract accompanied by a fraudulent act. In the prior Order, the Court dismissed the South Carolina Unfair Trade Practices Act claim and also dismissed Willie Brown as a Plaintiff. That portion of the prior Order is unchanged, and those rulings remain in effect. However, the Court now alters its prior Order and dismisses the remaining causes of action except for the breach of contract cause of action. The Court denies Defendant's Motion to Dismiss with respect to the breach of contract cause of action. This case will proceed only on the breach of contract cause of action.

Under South Carolina law, an insurer who has a meritorious coverage defense is free to litigate the issue without fear of a bad faith or extra contractual claim. *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359, 415 S.E.2d 393, 396 (1992). Moreover, an insurer is not required to concede a novel issue of law in order to avoid a bad faith lawsuit. *Id.*; *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 645, 594 S.E.2d 455, 462 (2004).

In this case, Progressive Northern submitted legal authority that the term or the phrase "expenses incurred" meant the amount of money which an insured is legally obligated to pay for medical treatment. *Gordon v. Fidelity & Cas. Co. of N. Y.*, 238 S.C. 438, 446, 120 S.E.2d 509, 513 (1961); *Barker v. Washington Nat. Ins. Co.*, 2013 WL 1767620, at *4 (D.S.C. Apr. 24, 2013). Progressive Northern also submitted out of jurisdiction cases supporting this principle of law. In opposition, the Plaintiff contends that the reduction of the medical invoices pursuant to an agreement between South Carolina Medicaid and the medical provider constitutes a setoff under South Carolina Code Section 38-77-144. As such, she contends that the reduction is improper, and

she should be entitled to the full policy limits of medical payments coverage. *See* S.C. Code § 38-77-144; *Cothran v. State Farm Mut. Auto. Ins. Co.*, 427 S.C. 545, 831 S.E.2d 919 (2019). Based on this, the Court declines to alter its earlier ruling and dismiss the cause of action for breach of contract. However, the Court finds that based on the allegations of the Complaint, and the legal positions of the parties, that South Carolina law would not recognize a cause of action for bad faith, breach of the duty of good faith and fair dealing (which is duplicative), breach of fiduciary duty (which is also duplicative) or breach of contract accompanied by a fraudulent act under these circumstances. Therefore, those causes of action in the Plaintiff's Complaint, are hereby dismissed. Plaintiff's violation of South Carolina Code § 38-77-144 claim is also dismissed. The statute creates no private cause of action. *See Dorman v. Aiken Commc'ns, Inc.*, 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990) (“[T]he general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability.”). “However, statutes relating to an insurance contract are generally part of the contract as a matter of law.” *Lincoln Gen. Ins. Co. v. Progressive N. Ins. Co.*, 406 S.C. 534, 539, 753 S.E.2d 437, 439 (Ct. App. 2013). Therefore, a violation of this statute may constitute a breach of the insurance contract.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

The prior ruling dismissing the Plaintiff Willie Brown and the South Carolina Unfair Trade Practices Act claim is reaffirmed. The causes of action for bad faith, breach of the duty of good faith and fair dealing, breach of fiduciary duty, and breach of contract accompanied by a fraudulent act are also dismissed.

The only remaining cause of action in this case will be the Plaintiff's cause of action for breach of contract. Nothing in this Order should be construed as a ruling on whether the

reimbursement of the reduced amounts of the bills of the medical providers, pursuant to an agreement with South Carolina Medicaid by the providers, constitutes a setoff under South Carolina law. That issue is subject to further argument after discovery is completed.

IT IS SO ORDERED.

The Honorable Brian M. Gibbons

Chester, South Carolina

Dated: _____



Chester Common Pleas

Case Caption: Alexis Jones , plaintiff, et al VS Progressive Northern Insurance Company
Case Number: 2020CP1200207
Type: Order/Amend

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge