

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

CASE NO: 2019-000322-CA-01

SECTION: CA24

JUDGE: Antonio Arzola

MSP Recovery Claims, Series, LLC et al

Plaintiff(s)

vs.

Bristol West Insurance Company

Defendant(s)

**ORDER GRANTING DEFENDANT'S AMENDED MOTION TO DISMISS SECOND
AMENDED COMPLAINT**

THIS CAUSE came before the Court on Defendant Bristol West Insurance Company's ("Bristol West" or "Defendant") Motion to Dismiss Plaintiffs' Second Amended Complaint. The Court, having reviewed that Motion and the Response by Plaintiffs MSP Recovery Claims, Series LLC, MSPA Claims 1, LLC, and Series PMPI ("Plaintiffs"), having heard the argument of counsel on March 5, 2020, and being otherwise fully informed, **ORDERS** and **ADJUDGES**:

Defendant's Motion to Dismiss is GRANTED with prejudice as to Count I for declaratory relief and without prejudice as to Count II for a pure bill of discovery.

Background

1. Plaintiffs filed their initial Complaint on January 4, 2019, an Amended Complaint on September 20, 2019, and Second Amended Complaint on January 16, 2020. Defendant filed a Motion to Dismiss in response to each version of the complaint. In the Second Amended Complaint ("SAC"), Plaintiffs allege that they are companies that have obtained assignments from nine (9) entities that provide care to Medicaid beneficiaries (the "Assignors"). The SAC

alleges that Plaintiffs' Assignors paid for certain accident-related medical expenses of these Medicaid beneficiaries, and that these payments should have been paid by Defendant. As a result, Plaintiffs allege that they need the following relief: Count I for "Declaratory Relief" seeks to have this Court to declare that Defendant: (a) "has an affirmative duty to ascertain whether its insureds are entitled to Medicaid benefits"; (b) "has an affirmative duty to coordinate benefits as a primary payer"; and (c) "must alert Medicaid Payers of its primary obligation pursuant to section 627.736(4), Florida Statutes, to enable the proper coordination of benefits"; or, in the alternative, Count II for a "Pure Bill of Discovery" seeking to compel Defendant to identify its insureds who were/are Medicaid beneficiaries and whether medical payments were made. The SAC alleges in conclusory terms that Plaintiffs lack an adequate legal remedy and that the information sought is solely in the possession of Defendant.

Count I – Declaratory Relief

2. The Court finds that Count I does not seek a declaration but amounts to a claim for a mandatory injunction to require Defendant to determine whether its insureds are entitled to Medicaid benefits, coordinate benefits as a "primary payer," and alert entities that allegedly pay for Medicaid beneficiaries' accident-related medical treatment of its alleged primary payer status.

3. The Court further finds that the SAC seeks injunctive relief as to a past harm, and injunctive relief is not proper where the alleged harm already occurred; it is only available to prevent threatened, irreparable harm. *Speer v. Evangelisto*, 662 So. 2d 1340, 1340-42 (Fla. 2d DCA 1995).

4. Additionally, Plaintiffs have a remedy at law by way of an action for damages,^[1] and a claim for injunctive relief is improper where an adequate remedy at law exists. *See Johnson v. Killian*, 27 So. 2d 345, 346 (Fla. 1946); *see also Stand Up for Animals, Inc. v. Monroe Cty.*, 69 So. 3d 1011, 1013 (Fla. 3d DCA 2011). A claim for declaratory relief also

may be dismissed where there is an adequate remedy at law. *Cruz v. Union General Ins.*, 586 So. 2d 91, 91-92 (Fla. 3d DCA 1991).

5. As set forth by the Florida Supreme Court, declaratory relief is warranted only if:

(1) “there is a bona fide, actual, present practical need for the declaration;” (2) the declaration “deal[s] with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts;” (3) “some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts;” (4) “there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law;” (5) “the antagonistic and adverse interest are all before the court by proper process or class representation;” and (6) “the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.”

Martinez v. Scanlan, 582 So. 2d 1167, 1170 (Fla. 1991) (citation omitted).

6. Plaintiffs' claim for declaratory relief fails to state a cause of action.

7. A review of the SAC demonstrates that there is no present, practical need for any declaration. Plaintiffs are alleging only past harm. Plaintiffs are asking for what amounts to legal advice or an advisory opinion by the Court with respect to potential future claims that Plaintiffs may or may not have some involvement in, which is an improper request for declaratory relief.

8. Plaintiffs allege in a conclusory manner that they are in doubt concerning their rights, and allege that a bona fide present controversy exists between Plaintiffs and Defendant concerning the proper interpretation of section 86.021, Florida Statutes. (SAC ¶ 58). The Court finds, however, that Plaintiffs fail to allege that they are uncertain as to their own rights.

9. Although Plaintiffs do not pay for anyone's medical care, are not insureds, and do not allege assignments from insureds, Plaintiffs allege standing through their assignments with

Medicaid Managed Care Organizations (“MCOs”) and/or their downstream entities. Plaintiffs allege ownership of assignments that convey the rights to collect reimbursement of money allegedly already paid by MCOs and/or their downstream entities on behalf of their insureds that should have been paid in the first instance by Defendant, and not to prevent future payments.

10. Here, any right to reimbursement is not dependent on the declarations sought by the Plaintiffs. Instead, the right to reimbursement and the method of collecting same is already established under Florida law. Declaratory relief is not proper where, as here, a plaintiff is not in doubt as to its rights. *Swain v. Reliable Ins. Co.*, 200 So. 2d 862, 863 (Fla. 3d DCA 1967).

11. The declaration being sought asks this Court to potentially legislate from the bench and create obligations and requirements that are not found in the Florida statutes. This would be an improper use of an action for declaratory relief. The Court is extremely concerned in a situation such as this, where the law appears to be clear that the Defendant has to be put on notice by the Medicaid program pursuant to sections 627.736(4) and 409.910(4) of the Florida Statutes. Further, sections 409.910(5) and 409.907(3)(f) of the Florida Statutes set forth the mechanisms and methods for the coordination of benefits.

Count II – Pure Bill of Discovery

12. Florida law is clear that a pure bill of discovery is a rarely used form of equitable relief. *Trak Microwave Corp. v. Culley*, 728 So. 2d 1177, 1178 (Fla. 2d DCA 1998). A pure bill of discovery is proper in only “narrow and limited circumstances.” *Venezia Lakes Homeowners Ass’n, Inc. v. Precious Homes at Twin Lakes Prop. Owners Ass’n*, 34 So. 3d 755, 756 (Fla. 3d DCA 2010). A pure bill of discovery “may not be used ‘as a fishing expedition to see if causes of action exist.’ Neither is it available simply to obtain a preview of discovery obtainable once suit is filed.” *Mendez v. Cochran*, 700 So. 2d 46, 47 (Fla. 4th DCA 1997) (internal citations omitted); *see also Vorbeck v. Betancourt*, 107 So. 3d 1142, 1145-47

(Fla. 3d DCA 2012) (pure bill petition found improper because it was being used merely to substantiate prospective causes of action against already identified defendants); *Kirlin v. Green*, 955 So. 2d 28, 29-30 (Fla. 3d DCA 2007) (plaintiff improperly filed bill of discovery to “utilize the trial court’s resources to go on a pre-suit ‘fishing expedition’ to substantiate her claims” and try to remedy her “reluctance to become exposed to claims for . . . attorneys’ fees in filing a frivolous lawsuit without first determining what, if any, evidence supports [her] grounds for recovery”) (citation omitted).

13. The SAC does not plead sufficient facts to show that the rare circumstances justifying the use of a pure bill of discovery are present in this case. Here, Plaintiffs already know the hoped-for cause of action and the identity of the intended defendant. (*See, e.g.*, SAC ¶ 11.) As in *Kirlin* and *Vorbeck*, Plaintiffs cannot use the pure bill of discovery under these circumstances.

14. The Court is also concerned that the pure bill of discovery claim in Count II seeks protected private medical and financial information about individual Medicaid recipients who are not parties or clients of Plaintiffs’ counsel. Further, the Court is concerned that, by asking the Defendant to identify its Medicaid-enrollee-insureds, Plaintiffs may be seeking a customer list that could violate protections for potential trade secrets of the Defendant.

15. The Court does not reach the other arguments in the Motion to Dismiss regarding the chains of alleged assignments. Accordingly,

IT IS HEREBY ORDERED THAT Defendant’s Motion to Dismiss is GRANTED with prejudice as to Count I for declaratory relief and without prejudice as to Count II for a pure bill of discovery with leave to amend Count II within forty-five (45) days from the entry of this Order to file another amended complaint for pure bill of discovery should Plaintiffs seek to do so.

IT IS FURTHER ORDERED THAT any further amendment to Plaintiffs’ pure bill count must plead sufficient ultimate facts and non-conclusory allegations addressing the following issues:

a. Whether, and if so why, Plaintiffs are unable to obtain the information they seek directly from the Assignors. Plaintiffs must explain whether the Assignors lack access to the information Plaintiffs seek through means such as communication with their enrollees, the State of Florida Medicaid agency, or the medical providers they allegedly paid;

b. Whether, and if so why, Plaintiffs lack access to and are unable to obtain the information they are seeking from the State of Florida Medicaid agency through a Freedom of Information Act/Sunshine Law request or the mechanism created in section 409.910 (5), Florida Statute;

c. Whether, and if so why, Plaintiffs lack access to and are unable to obtain the information they are seeking directly from the providers that their Assignors allegedly paid or directly from the Assignors’ enrollees;

d. How the production of the information sought by Plaintiffs’ in their pure bill would not infringe upon the enrollees’ privacy rights or otherwise violate any state or federal regulations implemented to protect patient privacy. Plaintiffs must explain whether the Plaintiffs and/or their Assignors received authorizations, waivers, or releases from the enrollees that would allow them to obtain the personal, private health and financial information that Plaintiffs are seeking. If they did not, then the Plaintiffs must explain why they are unable to obtain such authorizations, waivers, or releases.

e. How the production of the information requested by Plaintiffs in their pure bill regarding Medicaid beneficiaries would not violate any trade secrets that Defendant has to its customer list.

f. If Plaintiffs intend to re-allege the conclusory allegation from their Second Amended Complaint that “Defendant has sole possession of the information requested,” (SAC ¶ 65), Plaintiffs shall plead ultimate facts sufficient to support that allegation.

[1] The Complaint suggests a claim for payment of damages. (SAC at p. 14 [“Exhibit A is comprised of instances where Defendant (1) should have paid for Enrollees’ medical expenses or

(2) should reimburse Plaintiffs for payments made for Enrollees' medical expenses."]).

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 25th day of May, 2020.



2019-000322-CA-01 05-25-2020 2:47 PM

Hon. Antonio Arzola

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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