

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU
PRESENT: HONORABLE JOHN M. GALASSO, J.S.C.

LIBERTY MUTUAL INSURANCE COMPANY,
LIBERTY MUTUAL FIRE INSURANCE COMPANY,
LIBERTY INSURANCE CORPORATION, THE FIRST
LIBERTY INSURANCE CORPORATION, LM
INSURANCE CORPORATION, LIBERTY MUTUAL
MID-ATLANTIC INSURANCE COMPANY, LIBERTY
COUNTY MUTUAL INSURANCE COMPANY and LM
PROPERTY AND CASUALTY INSURANCE COMPANY,

Index No. 12-007693
Sequence #s 001,002
Part 37

Plaintiffs,

01/25/13

- against -

FIVE BORO PSYCHOLOGICAL SERVICES, P.C., ALL
BORO PSYCHOLOGICAL SERVICES, P.C., FIVE
BORO PSYCHOLOGICAL & LICENSED MASTER
SOCIAL WORK SERVICES, P.L.L.C., JOHN BRAUN,
PhD, VLADIMIR GRINBERG and V.G. HEALTHCARE
MANAGEMENT, INC.,

Defendants,

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Upon the foregoing papers, plaintiffs' applications by order to show cause for a preliminary injunction * and sanctions against the defendants are granted as follows:

This case involves an action by an insurance company and its affiliates against several purported health care providers. Plaintiffs seek a declaratory judgment that it is not obligated to reimburse defendants for any no-fault claims for the provider defendants' failure to meet the New York State licensing requirement (*State Farm v. Mallela*, 4 NY3d 313; see 11NYCRR 65-3.1 (a) (12)). Plaintiffs allege the provider defendants are owned by defendant Grinberg who is not licensed to practice psychology and that the defendants engage in unlawful fee splitting (see also Business Corporation Law secs. 1503 and 1507; Limited Liability Company Law secs. 1203 and 1207; Education Law secs. 6530 (19) and 6531; 8 NYCRR 29.1 (b) (4)).

* A TRO is in effect pending the determination of this application.

On February 29, 2012, defendant Ginsberg was indicted for a scheme to defraud insurance companies, such as the one alleged at bar, by paying licensed practitioners to set up health care practices as straw owners but that defendant Ginsberg would secretly own and control. In turn, it is alleged, the licensed health care practitioners' professional corporations billed private insurers for bogus medical treatment.

Nevertheless, there are at least eighty-three no-fault collection actions pending in the New York City Civil Court brought by the provider defendants against the plaintiffs herein. Those plaintiffs/providers are also represented by defense counsel herein or his firm. The unreimbursed claims are worth approximately \$700,000. In addition, plaintiffs maintain that they should recover about \$966,516. that it has been caused to wrongfully pay to the provider defendants.

Liberty Mutual also seeks a preliminary injunction to stay all pending actions that are in the New York City Civil Court and to bar defendants from instituting further collection actions or submitting further claims until the licensing requirements issue is resolved.

Defendants oppose the first application maintaining this Court has no authority to stay cases pending in other venues. In addition, defendants assert the equities are balanced in their favor and plaintiffs have not shown irreparable harm (see *Dover v. Nassau Health Care*, 89 AD3d 979).

On the merits, defendants maintain plaintiffs' theory of liability has been pre-empted by government regulations.

Preliminary, the Court concludes that the affidavit submitted in support of plaintiffs' request for a preliminary injunction may be considered (RPL 299-a (1); see *Fredette v. Town of Southampton*, 95 AD3d 940).

In addition, although plaintiffs seek some monetary relief in their application for this provisional remedy under Article 63 of the CPLR, the inclusion is acceptable since it is incidental to the declaratory judgment and permanent injunction plaintiffs seek (Siegal, *New York Practice, Fifth Edition*, Sec. 327).

Now upon plaintiffs' submissions and legal argument, the undersigned concludes that the plaintiffs have successfully demonstrated a likelihood of ultimate success on the merits, it will suffer irreparable injury if provisional relief is withheld and that the weight of the equities is in their favor (*State Farm v. Mallela, supra*; *Aetna Insurance Co. v. Capasso*, 75 NY2d 860; *Allstate v. Belt Parkway Imaging, P.C.*, 78 AD3d 592; e.g. *Autoone Insurance Co., et al. v. Manhattan Heights Medical, P.C.*, 24 Misc. 3d 1229 (A), 2009 WL 2357009; *St. Paul Travelers v. Nandi, et al.*, 15 Misc. 3d 1145 (A), 2007 WL 1662050).

Accordingly, the Court grants a preliminary injunction as follows:

1. All currently pending actions including those in the New York City Civil Court, arbitrations or other proceedings instituted by and/or on behalf of the defendants herein against plaintiffs involving reimbursement for no-fault benefits are hereby stayed and the various courts or bodies are enjoined against proceeding further with the multiple actions or proceedings referred to in plaintiffs' submissions pending a determination of the seminal issues in the case at bar;
2. Should defendants or others acting on their behalf commence any actions, arbitrations or other proceedings of the kind mentioned above, those matters also will be stayed before plaintiffs are required to serve an answer.

The Court does not continue the TRO dated October 1, 2012 with respect to enjoining defendants from commencing additional lawsuits or submitting bills or claims pending the determination herein (see page 2 (a) and (c)) for to do so could result in confusion in the event the Court ultimately finds in defendants' favor. This way in the interim when the defendants submit a claim, plaintiffs can deny reimbursement based upon the theory raised in this litigation and defendants can preserve their rights by commencing the appropriate action, arbitration or other proceeding.

If the determination is in plaintiffs' favor, they can move to consolidate and for dismissal under CPLR 3211 (a) (7).

Finally, plaintiffs' request for a waiver of any requirement to post an undertaking in connection, with this application is denied (CPLR 6313 (c)). An undertaking is mandatory in a motion for a preliminary injunction.

Since plaintiffs did not already provide an undertaking, the Court *sua sponte* directs plaintiffs to secure one forthwith, which will be considered to be filed *nunc pro tunc*, in the amount of \$20,000 to cover potential defense fees and costs in the case at bar. The Court also takes into consideration in the event defendants prevail and the stay is lifted, interest and attorneys fees can be sought in each New York City Civil Court case, (see *Livas v. Mitzer*, 303 AD2d 381; *Wasus v. Young Sun Oh*, 86 AD2d 753).

Turning to plaintiffs' second application concerning an order to show cause and stay issued in the Civil Court of the City of New York, County of Kings in *Five Boro, et al., Liberty Insurance Company* under Index Number 45750/10 signed on October 22, 2012 (Devin P. Cohen, JCC), the undersigned's TRO was made prior to the application for the order to show cause, by Irena Golodkeyer on behalf of Gary Tsirelman, P.C.

Counsel on the Kings County matter cannot claim to be unaware of the TRO in the case at bar. Although Massimiliano Valerio, Esq, appeared on behalf Tsirelman & Valerio, P.C. in opposition to the order to show cause, both firms are interrelated and both have appeared on behalf of these defendants in pursuing reimbursement in the case at bar as well as in other actions. Moreover, both firms answer to the same telephone number of 718-506-9300, although Gary Tsirelman, P.C. also has another number for its Jay Street office.

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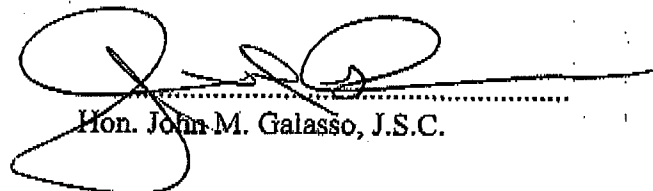
Because of the procedural posture of this order to show cause, the Court cannot hold defendants in contempt. Nevertheless, the Court can and does direct plaintiffs in the Kings County matter to withdraw that order to show cause.

In addition, defendants herein are directed to reimburse Liberty Mutual for the costs in bringing the Nassau County Supreme Court order to show cause for relief from the Kings County order.

Plaintiffs may resubmit the subpoenas relevant to the Nassau County action with a copy of this decision attached for the consideration of the banks' legal department on notice to both firms mentioned above.

Plaintiffs herein are also directed to schedule a preliminary conference for disclosure on an expedited basis for a bench trial seeking a declaratory judgment and permanent injunction.

February 13, 2013



Hon. John M. Galasso, J.S.C.

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