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Circuit Court of Michigan.
Oakland County
Bruce E. RUBEN, M.D., P.C., Plaintiff,
and
Brian Badgett, Intervening-Plaintiff,
v.
ALLSTATE INSURANCE COMPANY, Defendant.
No. 02041588.
August 24, 2006.

Stipulation and Order of Final Judgment

[James L. Borin](#) (P11013), [Karen Libertiny Ludden](#) (P48815), Garan Lucow Miller, P.C., Attorneys for Defendant, 1111 West Long Lake Rd., Suite 300, Troy, MI 48098, (248) 641-7600,

[Gerard V. Mantese](#) (P34424), [Mark C. Rossman](#) (P63034), Mantese and Associates, P.C., Attorneys for Plaintiff, 1361 E. Big Beaver Road, Troy, MI 48083, (248) 457-9200.

At a session of said Court held on: AUG 24 2006
before the Hon. RUDY J. NICHOLS Circuit Court Judge

WHEREAS, Allstate Insurance Company ("Allstate") having filed a cause of action against Bruce E. Ruben, M.D., P.C. ("Ruben") on June 21, 2002 seeking claims for restitution, recoupment, fraud, and mistake of fact;

WHEREAS, Ruben having filed a counter-claim against Allstate seeking appropriate payment under the No-Fault Act and a declaratory judgment regarding payment for the future care of his patient, Brian Badgett ("Badgett");

WHEREAS, the Court having dismissed Allstate's claims for restitution, recoupment, fraud, and mistake of fact prior to trial;

WHEREAS, the only remaining claims for trial were Ruben's claims for declaratory relief and for non-payment of No-Fault claims for the time period of February 1, 2004 through August 19, 2005;

WHEREAS, the Court having realigned the parties rendering Ruben the Plaintiff and Allstate the Defendant;

WHEREAS, the Court having denied Allstate's motion to purchase medicine from a pharmacy (or equate the cost thereto) under [Kitchen v. State Farm Ins. Co., 202 Mich. App. 55 \(1993\)](#);

WHEREAS, a trial having been held in this matter between August 15, 2005 and Au-

gust 19, 2005;

WHEREAS, the Court, during trial, on August 17, 2005, having denied Allstate's motion for a directed verdict based on violations of the Public Health Code, [MCL § 333.16101](#), et. seq.;

WHEREAS, a Jury having rendered a verdict in the form attached hereto as Exhibit 1 ("the Jury Verdict Form"), valuing such services for the period of February 1, 2004 to August 19, 2005 at \$547,213.95;

WHEREAS, Allstate having paid all such sums to Ruben for the care of Badgett;

WHEREAS, the parties having filed, and the Court having ruled on, all of their respective post-judgment motions for attorney fees, costs, interest, and various other matters on February 15, 2006;

WHEREAS, the parties hereby stipulating and agreeing to a Judgment as set forth below, and the Court being fully advised in the premises, it is hereby ordered as follows:

Medical Benefits Through August 19, 2005

IT IS HEREBY ORDERED that, at trial, the Jury awarded the monetary sum of \$547,213.95 to Bruce E. Ruben, M.D., P.C. ("Ruben"), as the reasonable charge for the medical services and products provided by Ruben to Badgett for the time period of February 1, 2004 to August 19, 2005. Allstate paid \$163,341.60 to Ruben prior to the trial (which was applied to the verdict as a credit) and subsequently \$452,148.82 was paid by Allstate resulting in an overpayment of \$68,276.47. This overpayment of \$68,276.47 will be recovered by way of an offset against bills submitted by Ruben after the date of entry of this Judgment. Said sum is inclusive of all interest, costs and attorney fees which may have been assessed, and it has been fully paid by Allstate to Ruben. Thus, no additional sums are owing by Allstate to Ruben for medical services or products provided during the period of February 1, 2004 to August 19, 2005.

Declaratory Effect Of The Jury Verdict Form On Future Care

IT IS FURTHER ORDERED that the Jury Verdict Form attached hereto as Exhibit 1 is hereby incorporated in its entirety into this Final Judgment, and it shall bind the parties with respect to payment for medical services and products for Badgett, as specified by the "CPT" procedure codes and "A" and "J" codes that were actually litigated in the case and found to be medically necessary, as is reflected on the Jury Verdict Form.

IT IS FURTHER ORDERED that for services and supplies that were not litigated between the parties and which are not on the Jury Verdict Form, the parties stipulate and agree to resolve any disputes relative to Badgett, as set forth herein.

Benefits Subsequent To August 19, 2005 To The Present

IT IS FURTHER ORDERED that subsequent to the date of August 19, 2005 and up to the date of the entry of this Judgment, Allstate has paid for certain benefits

provided by Ruben to Badgett that were due and owing pursuant to the Jury Verdict Form. However, as set forth below, there are certain Disputed Items for which Allstate has not paid and which are not resolved by this Judgment.

Disputed And Potentially Disputed Items

IT IS FURTHER ORDERED that the medical necessity of certain medical services and products as to issues that were not litigated is currently in dispute between the parties and, to date, Allstate has not paid for such items. Such items consist of the following:

1. Manual lymphatic massage therapy
2. The use of different types of debridement on the same day and frequency of debridement.

(hereinafter "Disputed Items"). Other than those items identified above, there are no Disputed Items between the parties at this time.

IT IS FURTHER ORDERED that the parties and the Court recognize that due to the nature of Badgett's medical condition, and Ruben's continuing provision of medical treatment and care of Badgett, other items of medical services and products may be provided in the future by Ruben to Badgett which were neither litigated nor resolved by the trial in this matter and are therefore not part of the Jury Verdict Form. Accordingly, this Judgment and the Jury Verdict Form shall not be construed in any manner to preclude the implementation of additional and different medical services and products that are medically necessary for the care of Brian Badgett. However, since such items were not litigated or resolved by the trial in this matter, certain of them may be disputed by the parties in the future should any disagreement relative thereto arise (hereinafter "Potentially Disputed Items"). Any Disputed or Potentially Disputed Items shall be resolved as set forth below.

Reasonable And Customary Charge For Medically Necessary Items Not On Jury Verdict Form

IT IS FURTHER ORDERED that, with respect to any Disputed or Potentially Disputed Item that is found to be medically necessary for the care and treatment of Badgett, or with respect to any item not on the Jury Verdict Form but which the parties agree to be medically necessary, the reasonable and customary charge which Allstate shall pay for such item shall be defined by the 85th percentile for the geographical situs in which the treatment is provided to Badgett as set forth in the most recently published INGENIX manual. Such charge shall not have any effect on the customariness or reasonableness of Ruben's charges with respect to any other patient.

Dispute Resolution

IT IS FURTHER ORDERED that, with respect to any Disputed Item or Potentially Disputed Item, the parties shall engage in an alternative dispute resolution process, which shall consist of the following three step process: First, the parties shall negotiate in good faith among themselves in an effort to reach a resolution of any Disputed Item or Potentially Disputed Item. In doing so, the parties shall, among other things, submit their respective positions as to any such item in writing to

each other for consideration. Second, if the parties are unable to reach a resolution through the first step, they shall retain a mutually agreed upon facilitator to assist them in negotiation. If a facilitator cannot be agreed upon between the parties, the Court shall appoint a facilitator of its own choosing. The parties are free to accept or reject any recommendations that the facilitator may make during facilitation. However, the parties are required to negotiate in good faith at all times. The negotiation-facilitation process shall be concluded within 90 days from the submission of an invoice that is disputed by Allstate, during which time there shall be no attorney fees or interest taxed if a resolution is reached by the parties.

In the event that the parties are unable to reach a resolution through the negotiation-facilitation process, then the parties shall submit their dispute to the American Arbitration Association ("AAA") to be conducted in accordance with Michigan law. The parties shall attempt to agree upon a mutually agreeable arbitrator. If the parties cannot agree on a single arbitrator, then the panel shall consist of three arbitrators - one chosen by Plaintiff, one chosen by Defendant, and the third arbitrator to be chosen by the two arbitrators selected by the parties. In addition to rendering an award as to the medical necessity of any Disputed Item, the arbitrators shall also have the authority to award applicable interest under the No-Fault Act. Any award rendered by the AAA shall be binding upon the parties, and Judgment may be entered thereon by any court of competent jurisdiction. However, either party shall have a right of appeal to this Court as to any arbitration award. The standard of review and procedure relative to any such appeal shall be governed by [MCR 3.602](#). Any ruling by the Court on an appeal from an arbitration award shall be final and binding upon the parties, and they shall exercise no further rights of appeal.

Attorney-Fees, Costs, And Interest

IT IS FURTHER ORDERED that Allstate hereby waives its rights to all interest, costs, and attorney fees relative to the Court's rulings at the hearing held on February 15, 2006, and which may be otherwise available now or in the future.

IT IS FURTHER ORDERED that Ruben hereby waives any and all rights to seek any additional interest, costs, and attorney fees relative to the outcome of the trial in this matter.

IT IS FURTHER ORDERED that all parties hereby agree to forego and waive their right to any appeal from this Judgment, or any prior Order or ruling of this Court in these proceedings, same being consideration for mutual waiver of any and all respective rights to interest, costs, and attorney fees.

Jurisdiction Of This Court

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this litigation only for purposes of enforcing this Judgment, ruling on any appeals from arbitration, as set forth above, and to modify this Judgment pursuant to the standards and procedures set forth in [MCR 2.612](#).

THIS ORDER RESOLVES THE LAST PENDING CLAIM AND CLOSES THE CASE.

IT IS SO ORDERED.

<<signature>>

Circuit Court Judge

he parties so stipulate as to form and substance:

MANTESE AND ASSOCIATES, P.C. BRUCE E. RUBEN, M.D. P.C.

<<signature>>

Gerard V. Mantese (P34424)
Mark C. Rossman (P63034)

<<signature>>

Bruce E. Ruben, M.D.

GARAN LUCOW MILLER, P.C.

ALLSTATE INSURANCE CO.

<<signature>>

James L. Borin (P11013)

<<signature>>

Janette Mainella

GNRL

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