



Superior Court of the State of Washington
for the County of Yakima

Judge Susan L. Hahn
Department No. 1
Judge's Chambers

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December 14, 2015

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Re: *Lopez v. HMA; Yakima County Case # 13-2-03580-3*

Dear Counsel:

This letter constitutes my oral ruling on Plaintiff's Motions (on behalf of herself and the previously certified class) for Partial Summary Judgment and her Motion to Compel Discovery. For sake of efficiency, the references to cases are abbreviated as they are included in your submissions.

The class in this case has been defined as:

All individuals who:

- 1) Obtained "appropriate hospital-based medical services" from Yakima Regional Medical Center and/or Toppenish Community Hospital at any time between October 22, 2007 and September 1, 2014;
- 2) Were, at the time of service, "indigent"; and
- 3) Were not screened for charity care.

Initially, Plaintiff seeks Partial Summary that the alleged actions of Defendants violated the Charity Care Act (herein after referred to as CCA). The CCA is set forth in RCW 70.170. The statutory provisions of particular import to this case are found in RCW 246.453.020 (1) and RCW 70.170.060 (5) and (6). Paraphrased and read together, the purpose of the CCA is to enable people below the poverty level (i.e. indigent) to have timely and appropriate access to charity care for appropriate hospital-based

medical services. The initial screening for charity care *must* precede collection efforts that are directed at the patient. Collection efforts shall include *any* demand for payment.

Plaintiff has convincingly demonstrated the Defendants engaged in a course of conduct which violated the intent of the CCA as well as its mandated requirements. Defendants routinely required deposits from indigent persons for appropriate hospital-based services before screening pursuant to the CCA. Many deposits were later determined to be incorrect (over-charged). As the initial screening *must precede collection* efforts, Defendants violated the CCA. Collection efforts include *any* demand for payment and not just unpaid balances sent to collection. Some overpayments were eventually refunded. Nevertheless, it is likely some indigent patients were unable to pay these deposits and as a result denied access to qualified medical services. Further, Defendants sent over-billed, inflated, delinquent accounts to collection which resulted in additional collection fees and costs.

Defendants argue that it is impossible to determine whether these violations applied to all class members since they do not yet know with particularity who is in the class. They are probably correct. However, it is not necessary to decide at this time whether damages will be determined on a case by case basis or whether it will be more effective and just as likely to determine reasonably accurate damages by establishing damages for the class as a whole. Thus, Defendants' argument that the method of determining damages violates Due Process is pre-mature.

In her second Motion for Partial Summary Judgment, Plaintiff asks the court to acknowledge the contract between the parties and to find Defendants breached it. She argues the CCA requirements that mandate reduced or waived fees for qualifying indigent patients and the prohibition against collection before assessment should be incorporated as contract terms.

As noted above, the Court has concluded that Defendants' actions violated the CCA as a matter of law. The initial concern with Plaintiff's argument for breach of contract is whether Defendants violated any of the actual contract provisions. Defendants argue they have not, a not unreasonable position. On the other hand, if the statutory requirements of the CCA are incorporated into the contract, a different conclusion is likely. Not surprisingly, Defendants argue that existing law cannot be incorporated and that to do so and then allow Plaintiff sue for breach of those implied contract terms defies logic. (*Richter v. Mutual of Omaha*; *Berger vs. Home Depot* and most importantly, *Reckter v. DSHS*).

Plaintiff, on the other hand, argues that, "It is settled law in this state that the law in force upon any subject matter of a contract is incorporated into and becomes a part of such contract, as much so as if the law were actually made a part of the agreement between the contracting parties. (citing *Foss v. Golden Rule* and supported by *Cornish College of the Arts v. 1000 Virginia Limited Partnership*; *O.S.T. v. Regence Blue Shield* and *Fischler v. Nicklin*.)

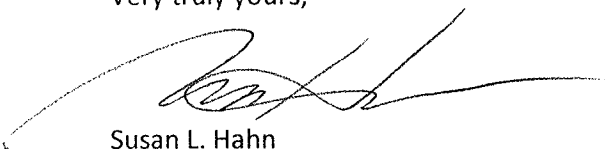
Plaintiff's argument that statutory requirements are incorporated into existing contracts must overcome Defendants' interpretation of *Reckter* which at first blush appears to support Defendants' position. Defendants rely on a portion of the *Reckter* opinion which states, "DSHS is correct that a Breach of a Duty imposed by statute does not create an action on contract." However, Defendants take that statement out of context. The actual, complete quote is, "DSHS confuses what is violated and how it is violated. While DSHS is correct that a Breach of a Duty imposed by statute does not create an action on contract (citation omitted), the duty providers seek to enforce here is a contractual duty around a contractual term. (emphasis added).

Defendants contract included a demand for payment and an agreement of financial responsibility which was imposed on indigent patients. The amount was most certainly a contractual term. The amount demanded was incorrect and the result of the Defendants' failure to determine CCA eligibility before setting the contract payment amount. This is precisely the kind of situation *Reckter* addresses where it states that "DSHS confuses what is violated and how it is violated." The basic contract between the parties in our case can be simplified to merely state: We provide you with services and you pay X-amount for the services. When Defendants ignore the CCA and further misstate the bill, the CCA must be incorporated into the contract to serve the basic premise for which the CCA was created. Failure to do so is illogical and incorrect.

Finally, Plaintiff moves the Court for an Order Compelling Discovery. Undoubtedly, as Defendants argue, they have already provided thousands of documents in discovery. They argue that the information requested is overly burdensome and will not lead to relevant evidence. They have not filed a motion for a protection order. Given the rulings of the Court by this letter, Defendants arguments are not well taken. Plaintiff seeks information that may indeed lead to relevant evidence. Plaintiff has offered to do much of the work of screening the information herself. The fact that Defendants have already provided a great deal of information is not persuasive but much appreciated. Plaintiff's motion to compel discovery is granted.

In conclusion, Plaintiff's Motions for Partial Summary Judgment and Motion to Compel Discovery are granted. Please prepare final papers for my signature for presentation in January.

Very truly yours,



Susan L. Hahn
Yakima County Superior Court