Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE AUGUSTUS C. AGATE IAS PART 24
Justice

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MICHELE VAIO and THOMAS VAIO,

Plaintiff,

-against-

HEALTH INSURANCE PLAN OF GREATER NEW YORK,

Defendant.

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Index No.: 3042/04

Motion Dated:
January 23, 2007

Cal. No.: 30

The following papers numbered 1 to 9 read on this motion by defendant for summary judgment dismissing the complaint.

	Papers Numbered
Notice of Motion - Affidavits - Exhibits	1 - 4
Answering Affidavits - Exhibits	5 - 7
Replying Affidavit	8 - 9
Defendant's Memorandum of Law	

Upon the foregoing papers it is ordered that this motion by defendant for summary judgment is decided as follows:

Plaintiffs were insured under a group policy for medical and health insurance underwritten by defendant Health Insurance Plan of Greater New York ("HIP"). In their verified complaint, plaintiffs allege that defendant breached the terms of the policy by failing to reimburse certain medical expenses for services rendered to plaintiff Michele Vaio beginning in 1999. Plaintiffs allege that they have complied with all the requests and procedures imposed upon them pursuant to the policy. Defendant now moves for summary judgment dismissing the complaint.

In support of its motion for summary judgment, defendant argues that all of the plaintiffs' claims for services rendered prior to February 11, 2001 must be dismissed because they are time-barred. According to defendant, the express terms of the policy require that any lawsuit against it must be commenced within three years from the date the service was received.

Defendant maintains that this action was commenced on February 11, 2004, which is more than three years after the date of service for most of the claims herein. Defendant asserts that this provision in the policy is proper since parties can shorten the period of time within which to commence an action. In addition, defendant notes that pursuant to the policy, before a lawsuit can be commenced against HIP, the recipient of the services must submit a claim and allow HIP to review the claim. Defendant contends that it has no claim on file for many of the alleged services provided and, thus, plaintiff has failed to comply with the terms of the policy. Furthermore, with respect to services for which defendant does have a claim on file, defendant asserts that these claims were either paid, denied or credited towards plaintiffs' coinsurance or deductible. Finally, defendant notes that pursuant to the clear provision of the policy, this action should have been commenced in New York County.

In opposition to the motion, plaintiffs argue that the three-year time limitation set forth in the policy is unenforceable. Plaintiffs maintain that such provision in the policy constitutes an adhesion contract since the shorter time limitation period was predetermined and incorporated into defendant's standard form contract. Plaintiff Michele Vaio notes that she never signed any agreement consenting to such a clause and did not have the option to decline such a clause. Thus, plaintiffs asseret that enforcement of this clause is against public policy. Plaintiffs further argue that contrary to defendant's contention, all of her claims were properly submitted to defendant for payment.

In reply, defendant asserts that plaintiffs have failed to produce any competent evidence to show that they submitted certain claims to defendant as required. Defendant also reiterates its position that the action is untimely pursuant to the clear provision of the policy. Finally, defendant rejects the plaintiffs' contention that the policy herein is an adhesion contract and argues that the shortened time within which to commence a lawsuit was neither procedurally nor substantively unfair.

An adhesion contract is found where the party seeking to enforce the contract used high pressure tactics or deceptive language in the contract, where there is inequality of bargaining powers between the parties and where the contract inflicts substantive unfairness upon the weaker party. (Morris v Snappy Car Rental, Inc., 84 NY2d 21, 30 [1994][quoting Sablosky v Edward S. Gordon Co., 73 NY2d 133, 139 [1989]; Precision Mech., Inc. v

Dormitory Auth. of the State of New York, 5 AD3d 653, 654 [2004]; Matter of Ball, 236 AD2d 158, 161 [1997]; see also Love'M Sheltering, Inc. v County of Suffolk, 33 AD3d 923 [2006].) Unfairness can be construed if the terms of the contract are not within the reasonable expectations of the party, or because its terms are unduly oppressive, unconscionable or contrary to public policy. (Aviall, Inc. v Ryder Sys. Inc., 913 F Supp 826, 831 [SDNY 1996].)

In the instant case, section 14, paragraph 6 of the policy, which is the provision in dispute, reads as follows:

> Legal Action. You must start any lawsuit against us under this Contract within 3 years from the date you received the service for which you want us to pay. Before you bring a lawsuit against us, you must submit a claim claim to us and allow us at least 60 days to review the claim.

The court finds that the provision in the policy shortening the time period to commence a lawsuit against HIP is not substantively unfair. An action for breach of contract must be commenced within six years after the cause of action accrued. (CPLR 213[2]; John J. Kassner & Co. v City of New York, 46 NY2d 544, 548 [1979].) Parties may, however, by writing, agree to a shorter period of time within which to commence an action. (CPLR 201; Joseph v Insureco, Inc., 25 AD3d 764, 765 [2006]; Jamaica Hosp. Med. Ctr. v Carrier Corp., 5 AD3d 442, 443 [2004]; Matter of Incorporated Vil. Of Saltaire v Zagata, 280 AD2d 547, 547 [2001].) Agreements to shorten the Statute of Limitations will be enforced as long as the shortened period is a reasonable one. (John J. Kassner & Co. v City of New York, 46 NY2d at 551.) Indeed, such shorter limitations are frequently found in insurance policies. (Buda v State, 278 AD 424, 427 [1951]; see Lugo v AIG Life Ins. Co., 852 F Supp 187, 195 [SDNY 1994]; Schachter v Royal Ins. Co. Of Am., 21 AD3d 1024, 1025 [2005]; Don's Corp. v Commercial Union Ins. Cos., 300 AD2d 535, 536 [2002]; Raniolo v Travelers Indem. Co., 279 AD2d 514, 515 [2001].) Here, the provision in the policy which requires that an action against HIP be commenced within three years is not unreasonably short or unfair. Indeed, periods of less than three years in insurance policies have often been found to be valid and enforceable. (see Warhoftig v Allstate Ins. Co., 199 AD2d 258, 258 [1993]; Carat Diamond Corp. v Underwriters at Lloyd's, London, 123 AD2d 544, 546 [1986]; Baker v Commercial Travelers Mut. Acc. Assn., 3 AD2d 265, 266 [1957].)

The court also finds that there was no procedural unfairness with respect to the provision at issue. Plaintiffs are unable to demonstrate that any "high pressure tactics" or "deceptive language" were used against plaintiffs here. (Sablosky v Edward S. Gordon Co., 73 NY2d 133 at 139; Gillman v Chase Manhattan Bank, N.A., 73 NY2d 1, 11 [1988].) Indeed, the last paragraph of the letter from Daniel T. McGowan, the President of defendant HIP, which accompanied the policy, states that "[y]ou have the right to return this Contract. Examine it carefully. If you are not satisfied, you may return it and ask us to cancel it. Your request must be made in writing within ten days from the date you receive this Contract." Thus, the instructions relating to the policy as well as the policy itself were clear and unambiguous, and the shortened Statute of Limitations contained in the policy is enforceable. Therefore, inasmuch as this action was commenced on February 11, 2004, all claims relating to services rendered prior to February 11, 2001 are time-barred and must be dismissed.

With respect to the claims for services rendered after February 11, 2001, the court finds that plaintiffs have failed to produce any admissible evidence to show that they submitted a claim to defendant HIP for these services, as required under the policy. The credit card receipts and printouts of services rendered to plaintiff Michele Vaio, annexed to the opposing papers, do not establish that a claim was actually submitted to defendant HIP. Plaintiffs have failed to submit an affidavit from one with personal knowledge of the facts. (Zuckerman v City of New York, 49 NY2d 557, 562 [1980].) While plaintiff Michele Vaio submits a statement that she concurs with the statements contained in the affirmation of her attorney, such statement is unsigned and unsworn. (see Briggs v 2244 Morris, LP, 30 AD3d 216, 216 [2006].) Further, even if plaintiffs could establish that the two health insurance claim forms, annexed to the opposing papers, for services rendered by Dr. Alexander J. Swistel, were properly submitted to defendant, the services were rendered on April 12, 2000 and October 9, 2000 and, thus, are time-barred.

Accordingly, this motion by defendant for summary judgment is granted, and the action is dismissed.

Dated: March 5, 2007

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AUGUSTUS C. AGATE, J.S.C.