

Grampian Boulevard, Williamsport, Lycoming County, Pennsylvania, among other places. Susquehanna Physician Services (hereafter “Susquehanna Physician”) is a non-profit corporation managed by and whose sole member is Susquehanna Health. Susquehanna Physician employs physicians to provide medical services to the public and has facilities located at 1100 Grampian Boulevard, Williamsport, Lycoming County, Pennsylvania, among other places. Susquehanna Physician previously employed Edgar Frank, M.D. Susquehanna Physician currently employs Rene R. Rigal, M.D., Joanne E. Wagner, M.D., and Naresh Negpal, M.D.

Fortis Insurance Company (hereafter “Fortis”) is an insurance company with its principal place of business at 501 West Michigan Street, Milwaukee, Wisconsin. Fortis conducts business in the Commonwealth of Pennsylvania.

Some of the patients treated by Susquehanna Physician doctors privately pay for the healthcare services received, but some patients pay for the healthcare services received by using third-party-payors, such as Fortis. Susquehanna Health, on behalf of Susquehanna Physician, will often enter into contracts whereby, generally stated, Susquehanna Health and the insurance payor agree that patients insured by that payor will be granted a percentage discount from Susquehanna Health healthcare provider’s normal charges (“Full Charges”), that those discounted charges will be paid by the insurance payor, and that the healthcare provider will not “balance bill” the patient for the difference between Full Charges and the discounted charges. At no time relevant hereto did Fortis have such a contract with Susquehanna Health, Susquehanna Physician, or any individual physicians employed by Susquehanna Physician.

On October 30, 2000, Dr. Frank provided the following medical care to John Doe No. 1: nasal/sinus endoscopy; repair of nasal septum; removal of ethmoid sinus; and exploration of maxillary sinus. John Doe No. 1 identified Fortis as his health insurance carrier and authorized that his bill for services be submitted to Fortis. Susquehanna Physician, on behalf of Dr. Frank, billed Fortis the sum of \$5,357.11 for the services provided by Dr. Frank to John Doe No. 1. The \$5,357.11 constituted the Full Charges for those services. The amount billed by Susquehanna Physician was the usual and customary charges for the services provided by Dr. Frank to John Doe No. 1.

Fortis remitted \$5,357.11 to Susquehanna Physician, and Susquehanna Physician accepted the amount on behalf of Dr. Frank. Susquehanna Physician did not balance bill John Doe No. 1 for the services rendered by Dr. Frank. Subsequent to this payment, Fortis conducted an audit of its health plan payments and determined that its contractual relationship with John Doe No. 1 had not required it to pay the Full Charges and that John Doe No. 1 should have paid \$1,151.11 of the amount owed to Susquehanna Physician.

In or around July 2003, Fortis demanded that Susquehanna Physician reimburse it the \$1,151.11. Susquehanna Physician refused to comply with the demand.

On or about January 15, 2003, Dr. Rigal provided medical services to Jane Roe. Susquehanna Physician submitted a claim to Fortis for payment. Fortis paid the amount of submittal on December 5, 2003, less \$46.76. Fortis withheld the \$46.76 to recoup part of the \$1,151.11 overpayment it made to Susquehanna Physician on account of John Doe No. 1.

On January 13, 2004, Dr. Wagner provided medical services to John Doe No. 2. Susquehanna Physician submitted a claim to Fortis for payment. Fortis paid the amount of the

submittal on February 16, 2004, less \$72.80. Fortis withheld the \$72.80 to recoup part of the \$1,151.11 overpayment it made to Susquehanna Physician on account of John Doe No. 1..

On February 9, 2004, Dr. Negpal provided medical services to John Doe No. 3. Susquehanna Physician submitted a claim to Fortis for payment. Fortis promptly paid the amount of submittal on April 8, 2004, less \$950.00. Fortis withheld the \$950.00 to recoup part of the \$1,151.11 overpayment it made to Susquehanna Physician on account of John Doe No.1.

Fortis had withheld a total of \$1,069.56 as part of its recoupment effort for its asserted overpayment on the account of John Doe No. 1.

Each of the three times Fortis withheld part of the payment due Susquehanna Physician dealt with patients, physicians, and procedures that were completely unrelated to Dr. Frank's treatment of John Doe No.1.

Subsequent to the initiation of this litigation, Fortis remitted to Susquehanna Physician the \$1,069.56 it had withheld.

B. Claims

In the complaint, Susquehanna Health and Susquehanna Physician advance two theories that they assert entitle them to declaratory relief. The first theory is that Fortis may not recover the disputed \$1,151.11 because Fortis cannot establish its right to such relief under the doctrine of equitable restitution. As such, Susquehanna Health and Susquehanna Physician seek the following:

- (1) a declaration that Fortis is estopped under the circumstances presented from claiming, after the fact of its payment and based on a purported unilateral mistake, that it is owed money by Susquehanna Health;

- (2) a declaration that Fortis is estopped from purporting to offset overpayments to Susquehanna Physician generally, rather than with respect to the physicians actually involved in the provision of services;
- (3) a declaration that Fortis must either remit to Susquehanna Physician the amounts that it unilaterally assessed against Susquehanna Health and Susquehanna Physician, or it must provide written notification to Jane Roe, John Doe No. 2 and John Doe No.3 that the EOB's it issued to Susquehanna Physician and those individuals were false and reflected payments that were never made by Fortis and that therefore those individuals should expect to receive a bill for those amounts from Susquehanna Physician
- (4) an award of attorney's fees under 42 Pa.C.S.A. §2503; and
- (5) such other relief as the Court deems appropriate and just under the circumstances.

The second theory is equitable estoppel. Susquehanna Health and Susquehanna Physician assert that Fortis is estopped from asserting a claim against Susquehanna Health and Susquehanna Physician for the alleged overpayment for the medical services provided by Dr. Frank. Accordingly, Susquehanna Health and Susquehanna Physician seek a return of the money withheld by Fortis regarding the services of Drs. Rigal, Wagner, and Nagpal in the amount of \$1,069.57 together with interest and costs of suit.

II. ISSUES

The issues before the court fall into three categories: procedural, substantive, and attorney's fees. There are two procedural issues before the court. The first is whether the court may exercise declaratory judgment jurisdiction over the case. The second is whether the matter is justiciable since Fortis paid Susquehanna Physician the \$1,069.56 it withheld for the services of Drs. Rigal, Wagner, and Nagpal.

There are two substantive issues before the court. The first is whether Fortis was within its rights to withhold part of the payment for the medical services Drs. Rigal, Wagner, and Negpal provided to insureds of Fortis as part of Fortis' attempt to recoup its alleged overpayment for medical services Dr. Frank provided to John Doe No. 1. In order to answer this question, the court must determine whether Fortis was entitled to recover from Susquehanna Health and Susquehanna Physician the \$1,151.11 it allegedly overpaid for the medical services Dr. Frank provided, and if so, whether Fortis could engage in self-help and withhold part of the payment for medical services that were unrelated to the medical services for which it allegedly overpaid.

The second substantive issue is whether Fortis is estopped from asserting that Susquehanna Health and Susquehanna Physician owe it for the alleged overpayment Fortis made to Susquehanna Physician for the medical services Dr. Frank provided.

The final issue is whether Susquehanna Health and Susquehanna Physician are entitled to attorney's fees pursuant to 42 Pa.C.S.A. §2503.

III. DISCUSSION

The court will take the procedural, substantive, and attorney's fees issues in order.

A. Procedural Issues

1. Court's Jurisdiction Over the Declaratory Judgment Action

This court has jurisdiction over the declaratory judgment action. As a general matter, this court possess declaratory judgment jurisdiction. *Empire Sanitary Landfill, Inc. v. Commonwealth, Dep't of Env'tl. Res.*, 684 A.2d 1047, 1055 (Pa. Super. 1996) (Only courts of record of the Commonwealth have declaratory judgment jurisdiction). The Declaratory

Judgment Act, 42 Pa.C.S.A. §7531 et seq., defines the scope of that jurisdiction. It states that, “Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.” 42 Pa.C.S.A. §7532. The core issue of this case is whether Pennsylvania law permits Fortis to withhold payment from Susquehanna Health and Susquehanna Physician as a form of self-help for its asserted previous overpayment for medical services rendered by Susquehanna Physician’s employees. This implicates the duties and rights of Fortis and Susquehanna Health and Susquehanna Physician with regard to the payment of medical services provided. Accordingly, it is appropriate for the court to exercise declaratory judgment jurisdiction over the matter.

2. Justiciability of the Case

Fortis’ payment to Susquehanna Physician of the \$1,069.56 for the medical services provided by Drs. Rigal, Wagner, Nagpal does not render this case moot. The mootness doctrine applies to declaratory judgment actions. *Util. Workers Union, Local 69, AFL-CIO v. Pub. Util. Comm’n*, 859 A.2d 847, 850 (Pa. Cmwlth. 2004). The mootness doctrine requires that an actual case or controversy exist at all stages of review. *Pap’s A.M. v. City of Erie*, 812 A.2d 591, 600 (Pa. 2002). If no actual case or controversy exists, then a court is precluded from reaching a decision on the merits of the case. *Util. Workers Union, Local 69*, 859 A.2d at 849. There are three exceptions to the mootness doctrine: (1) the conduct at issue is likely to be repeated but will necessarily escape judicial review; (2) there is great public interest in the resolution of the controversy; (3) one party would suffer a substantial detriment if the controversy is not judicially resolved. *Id.* at 850.

Even though Fortis has remitted the withheld payments, the court may still reach a decision on the merits of the case because the first exception applies. Fortis' practice of engaging in self-help by withholding partial payment for medical services is capable of repetition, but still evading judicial review. While Fortis has indicated that it has agreed not to engage in such a practice in the future with respect to Susquehanna Health and Susquehanna Physician, there is no evidence of a binding agreement to that effect which would preclude Fortis from taking such action. In the event of another perceived overpayment, Fortis could once again withhold payment for unrelated medical services and once again Susquehanna Health and Susquehanna Physician could bring suit to challenge Fortis' conduct. In the face of such a challenge, Fortis could then remit the withheld payment and end the controversy. This circuitous dance between Fortis and Susquehanna Health and Susquehanna Physician could go on ad infinitum and shield Fortis' self-help practice from judicial review. Thus, the matter is justiciable.

B. Substantive Issues

1. Fortis' Payment for the Medical Services Dr. Frank Provided

(a) Fortis' Right to the Alleged \$1,151.11 Overpayment

Fortis was not entitled to recover from Susquehanna Physician the \$1,151.11 it allegedly overpaid for the medical services Dr. Frank provided. Absent a contract or statutory authority, an insurer's right to funds overpaid to a creditor of one of its insured is determined by the theory of equitable restitution. To be entitled to restitution under this theory, a party must establish (1) a requisite mistake and (2) consequent unjust enrichment. *Commonwealth, Dep't of Gen. Servs. v. Collingdale*, 454 A.2d 1176, 1179 (Pa. Cmwlth. 1983). Unjust

enrichment does not exist where a third party pays a creditor in discharge of another's debt unless the creditor made misrepresentations to the third party and did not have notice of the third party's mistake. *See, Id.* at 1180.

Fortis is not entitled to equitable restitution because it cannot establish unjust enrichment. Susquehanna Physician was the creditor of the insured. John Doe No. 1 owed Susquehanna Physician money for the medical services Dr. Frank provided. Fortis' payment of the funds to Susquehanna Physician for the medical services rendered to John Doe No. 1 did not unjustly enrich Susquehanna Physician because it was entitled to that money.

Fortis has failed to present any evidence which would establish that Susquehanna Physician made misrepresentations to Fortis or had notice of Fortis' mistake in paying the \$1,151.11. There is no evidence that suggests Susquehanna Physician misrepresented to Fortis the type, amount, or cost of the medical services Dr. Frank provided to John Doe No. 1. There is no evidence that Susquehanna Physician had knowledge that it was a mistake for Fortis to pay Susquehanna Physician the \$1,151.11. The evidence does not demonstrate that Susquehanna Physician knew what percentage of payment Fortis and the insured were responsible for with respect to payment of medical services. Accordingly, Fortis was not entitled to recover the \$1,151.11 it paid to Susquehanna Physician.

(b) Fortis' Right to Engage in Self-Help

Fortis could not engage in self-help and withhold part of the payment for medical services that were unrelated to the care rendered by Dr. Frank even if Fortis was entitled to recover the \$1,151.11. As a general matter, Pennsylvania has "... a strong public policy against self-help or taking the law into one's own hands." *Hineline v. Stroudsburg Elec.*

Supply Co., Inc., 559 A.2d 566, 569 (Pa. Super. 1989), *app. denied*, 574 A.2d 70 (Pa. 1989).¹

This policy against self-help is in accord with the concept of due process. The basic elements of procedural due process are: (1) adequate notice, (2) an opportunity to be heard, and (3) the chance to defend oneself before a fair and impartial tribunal having jurisdiction over the matter. *Katruska v. Bethlehem Center Sch. Dist.*, 767 A.2d 1051, 1056 (Pa. 2001). To satisfy procedural due process requirements, the opportunity to be heard must be at a meaningful time and in a meaningful manner. *Kelly v. Mueller*, 861 A.2d 984, 990 (Pa. Super. 2004).

Self-help is contrary to procedural due process. Self-help denies a party the opportunity to be heard and the chance to defend oneself before a fair and impartial tribunal. The party employing self-help operates as the judge, jury, and executioner in the matter, which may lead to unjust results as the resort to self-help may be the product of inflamed passions produced by a perceived wrong. The practice of engaging in self help to redress civil wrongs cannot be tolerated because such civil vigilantism erodes the bedrock principles of procedural due process.²

¹ An exception to this general rule concerns trespassing tree branches. A landowner may resort to self-help to remove trespassing tree branches from his property. *Koresko v. Farley*, 844 A.2d 607, 617 (Pa. Cmwlth. 2004), *app. denied*, 857 A.2d 680 (Pa. 2004), *cert. denied*, 2005 U.S. LEXIS 655; *Jones v. Wagner*, 624 A.2d 166, 171 (Pa. Super. 1993), *app. denied*, 637 A.2d 286 (Pa. 1993).

² This is not to say that a party may never be able to employ self-help. Parties may enter into a contract that provides for the use of self-help if the contract is breached. As a general matter, parties are free to contract as they wish. *John B. Conomos, inc., v. Sun Co.*, 831 A.2d 696, 706 (Pa. Super. 2003), *app. denied*, 845 A.2d 818 (Pa. 2004). This general principle is an important one and one that courts are anxious to protect. *Tioga County Comm'rs v. C. Davis, Inc.*, 266 A.2d 749, 750-51 (Pa. 1970). However, a contract may be avoided where the terms affect public policy. *McIlvanie Trucking, Inc. v. Workers' Compensation Appeal bd.*, 810 A.2d 1280, 1286 (Pa. 2002).

Pennsylvania's general disdain for the use of self-help to remedy civil wrongs likely would not render the self-help provisions of a contract unenforceable as contrary to public policy. What makes the use of self-help outside the context of a contract provision unacceptable is that it is a unilateral decision. By employing self-help, that party determines that the alleged wrongdoer will not be given an opportunity to defend himself before a neutral body. In this scenario, the alleged wrongdoer has no say in the matter.

Accordingly, Fortis had no right to engage in self-help and withhold payment from Susquehanna Health and Susquehanna Physician for the medical services Susquehanna Physician's employees provided that were unrelated to the medical care at the center of the overpayment dispute.

**2. Susquehanna Health and Susquehanna Physician's
Equitable Estoppel Claim**

Fortis shall be equitably estopped from asserting a claim against Susquehanna Health and Susquehanna Physician for the \$1,151.11 it claims was overpaid to Susquehanna Physician for the medical services Dr. Frank provided John Doe No. 1. At its core, the doctrine of equitable estoppel is a doctrine of fundamental fairness. *L.S.K. v. H.A.N.*, 813 A.2d 872, 877 (Pa. Super. 2002). "The doctrine of equitable estoppel is applicable whenever a party, either by act or representation, intentionally or negligently induces another to believe certain facts, and the other justifiably relies and acts upon that belief." *Fessenden Hall of Pennsylvania, Inc. v. Mountainview Specialties, Inc.*, 863 A.2d 578, 579 (Pa. Super. 2004). "If the relying party is prejudiced by such reliance, then the other party is esstopped from denying those facts or repudiating his conduct or statements." *Ibid*. Thus, there are two elements to equitable estoppel: (1) inducement and (2) justifiable reliance on that inducement. *Novelty Knitting Mills v. Siskind*, 457 A.2d 502, 503 (Pa. 1983).

Contrast this with the contract provision scenario. In forming the contract, both parties have come to a mutual understanding and agreement as to the terms and conditions of the contract. With regard to the self-help provision, both parties have agreed to knowingly and voluntarily relinquish their procedural due process protections. Here, the decision to forego the opportunity to defend oneself before a neutral body is a bilateral decision. Accordingly, so long as the contract is otherwise valid, the self-help provision would likely be enforceable.

Fortis shall be equitably estopped from asserting a claim that Susquehanna Health and Susquehanna Physician owe it money for the overpayment of medical services Dr. Frank provided John Doe No.1. Fortis induced Susquehanna Health and Susquehanna Physician into believing that it was responsible for paying the entire bill for the medical services Dr. Frank provided John Doe No. 1. In 2000, Susquehanna Physician billed Fortis the sum of \$5,357.11, which constituted the full amount of Dr. Frank's medical services, and Fortis paid Susquehanna Physician \$5,357.11. It was not until approximately three years later, in July 2003, that Fortis contested its obligation to pay the full amount. There is no evidence that during the three year period Fortis indicated to Susquehanna Health or Susquehanna Physician that John Doe No. 1 was responsible for \$1,151.11 of the \$5,357.11 bill. Fortis' silence during the three year period lead Susquehanna Health and Susquehanna Physician to believe that the responsible party had paid the bill.

As such, Susquehanna Health and Susquehanna Physician justifiably relied upon Fortis' inducement that it was responsible for paying the full amount for the medical services Dr. Frank rendered John Doe No. 1. During the three year period, neither Susquehanna Health nor Susquehanna Physician made any attempts to recover the \$1,151.11 from John Doe No. 1. Susquehanna Health and Susquehanna Physician believed that the bill had been paid by the responsible party and the matter concluded.

Accordingly, Susquehanna Health and Susquehanna Physician shall be granted the declaratory relief they seek under the equitable estoppel theory.

C. Attorney's Fees Issue

Susquehanna Health and Susquehanna Physician do not specify which subsection of 42 Pa.C.S.A. §2503 entitles them to attorney's fees. Pursuant to 42 Pa.C.S.A. §2503, the following parties are entitled to attorney's fees:

- (1) The holder of bonds of a private corporation who successfully recovers due and unpaid interest, the liability for the payment of which was denied by the corporation.
- (2) A garnishee who enters an appearance in a matter which is discontinued prior to answer filed.
- (3) A garnishee who is found to have in his possession or control no indebtedness due to or other property of the debtor except such, if any, as has been admitted by answer filed.
- (4) A possessor of property claimed by two or more other persons, if the possessor interpleads the rival claimants, disclaims all interest in the property and disposes of the property as the court may direct.
- (5) The prevailing party in an interpleader proceeding in connection with execution upon a judgment.
- (6) Any participant who is awarded counsel fees as a sanction against another participant for violation of any general rule which expressly proscribes the award of counsel fees as a sanction for dilatory, obdurate or vexatious conduct during the pendency of any matter.
- (7) Any participant who is awarded counsel fees as a sanction against another participant for dilatory, obdurate or vexatious conduct during the pendency of a matter.
- (8) Any participant who is awarded counsel fees out of a fund within the jurisdiction of the court pursuant to any general rule relating to an award of counsel fees from a fund within the jurisdiction of the court.

- (9) Any participant who is awarded counsel fees because the conduct of another party in commencing the matter or otherwise was arbitrary, vexatious or in bad faith.
- (10) Any other participant in such circumstances as may be specified by statute heretofore or hereafter enacted.

42 Pa.C.S.A. §2503. The facts do not establish that Susquehanna Health and Susquehanna Physician fall within any of the enumerated categories set forth in §2503. Accordingly, Susquehanna Health and Susquehanna Physician are not entitled to attorney's fees.

IV. CONCLUSION

Susquehanna Health and Susquehanna Physician's declaratory judgment complaint will be granted.

ORDER

With regard to the Declaratory Judgment Complaint of Plaintiffs Susquehanna Regional Healthcare Alliance and Susquehanna Physician Services filed August 10, 2004, the court hereby DECLARES and ORDERS that:

Fortis Insurance Company was not entitled to recover the \$1,151.11 it paid to Susquehanna Physician Services as part of the compensation for the services Edgar Frank, M.D. rendered to its insured, John Doe No. 1.

Susquehanna Physician Services was entitled to the \$1,151.11 as a creditor of Fortis Insurance Company's insured, John Doe No. 1. Fortis Insurance Company's payment of the \$1,151.11 to Susquehanna Physician Services did not unjustly enrich Susquehanna Physician Services. Further, Susquehanna Physician Services accepted the money in good faith and made no inaccurate representations to Fortis Insurance Company to induce payment.

Fortis Insurance Company was not permitted to engage in self-help and withhold payment for medical services provided by employees of Susquehanna Physician Services that were unrelated to the medical services provided to John Doe No.1 in an attempt to recoup what Fortis believed to be an overpayment to Susquehanna Physician Services. Pennsylvania law does not permit this type of self-help.

Fortis Insurance Company is estopped from asserting a claim against Susquehanna Regional Healthcare Alliance and Susquehanna Physician Services for the \$1,151.11 it claims was overpaid to Susquehanna Physician Services for the medical services Edgar Frank, M.D. provided John Doe No. 1.

BY THE COURT:

William S. Kieser, Judge

cc: J. David Smith, Esquire
John P. Davis, III, Esquire
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Judges
Christian J. Kalas, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)