United states district court

middle district of north carolina

|  |  |
| --- | --- |
| Herbert West, M.D.,  Plaintiff  v.  Vesuvius Health Insurance Corp.,  Defendants. | Case No. 16-cv-404 |

# Complaint

Plaintiff, Herbert West, M.D., through his undersigned attorney, brings this suit against defendant Vesuvius Health Insurance Corp. and alleges as follows:

# Statement of Jurisdiction

1. Plaintiff is a resident of North Carolina.

2. Defendant is a Delaware corporation having its principal place of business in Hartford, Connecticut. Defendant regularly engages in the business of health insurance within the State of North Carolina, and this action arises out of defendant’s activity in this State.

3. This Court has jurisdiction of this action pursuant to 42 U.S.C. § 1331 because the action arises under the laws of the United States, and pursuant to 42 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds the sum of $75,000.

# Factual Background

4. The defendant is a health insurance company, issuing policies of insurance and operating managed health care plans in various states, including the State of North Carolina.

5. On or about September 1, 2015, the plaintiff contracted with the defendant to become a participating provider under the defendant’s managed care health plans in North Carolina.

6. Under the contract, the plaintiff provided medical treatment to individuals covered under the defendant’s managed care plans, for which the defendant agreed to compensate the plaintiff.

7. The defendant’s promotional material, contracts with the plaintiff and other participating providers, and reimbursement rate schedules falsely & misleadingly represented that providers would be compensated for covered procedures based on commonly accepted medical practice, standard coding practice, and the defendant’s reimbursement rate schedule.

8. The defendant engaged in a systematic illegal scheme of improperly altering billing codes (“downcoding”) and improperly combining separate procedures under a single billing code (“bundling”), as a means of reimbursing the plaintiff and other participating providers at rates lower than those provided under the contract and rate schedule.

9. As a result of the defendant’s deceptive acts and practices, the plaintiff was wrongfully denied compensation for services he provided under his contract with the defendant.

# Count I

## Deceptive Practices in Violation of the HICCUP Act

10. Plaintiff repeats and realleges the averments of each of the proceedings paragraphs.

11. The defendant’s misrepresentations regarding billing and reimbursement rates under its managed health care plans, and the defendant’s scheme of improperly downcoding and bundling, constitute deceptive practice by a health insurance company, in violation of the HICCUP Act.

12. As a proximate and foreseeable result of the defendant’s deceptive acts and practices, the plaintiff has suffered damages, including loss of income.

# Count II

## Deceptive Practices in Violation of N.C. Gen. Stat. § 75-1.1

13. Plaintiff repeats and realleges the averments of each of the proceedings paragraphs.

14. The defendant’s misrepresentations regarding billing and reimbursement rates under its managed health care plans, and the defendant’s scheme of improperly downcoding and bundling, constitute deceptive practice by a health insurance company, in violation of the North Carolina Deceptive Trade Practices statute, N.C. Gen. Stat. § 75-1.1.

15. As a proximate and foreseeable result of the defendant’s actions, the plaintiff has suffered damages, including loss of income.

# Prayer for Relief

WHEREFORE, plaintiff Herbert West requests judgment against defendant Vesuvius Health Insurance Corp., as follows:

(a) Awarding damages in such amount as may be found, or as otherwise permitted by law;

(b) Granting full costs of suit;

(c) Granting such other and further relief as the Court deems just and proper.

Dated: January 31, 2016 Respectfully submitted,

FLYWHEEL, SHYSTER, & FLYWHEEL, LLP

Waldorf T. Flywheel

Waldorf T. Flywheel

201 North Greene Street

Greensboro, North Carolina 27401

336-555-1212

ATTORNEYS FOR PLAINTIFF