

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ARTHUR J. METAYER and)
ELIZABETH A. METAYER,)

Plaintiffs,)

v.)

Civil No. 98-177-P-C

PFL LIFE INSURANCE)
COMPANY, and UNITED GROUP)
ASSOCIATION, INC.)

Defendants)

Recommended Decision on Defendants' Motion to Strike

Before the Court is the Motion to Strike (Docket No. 45) filed by Defendants, PFL Life Insurance Co. (PFL) and United Group Association, Inc. (UGA). Specifically, Defendants ask the Court to strike Plaintiffs' affirmative defense of estoppel to Defendants' subrogation counterclaim because it is untimely, futile and unfairly prejudicial. After reviewing the record, I recommend that the Court GRANT Defendants' motion and that the Court STRIKE Plaintiffs' estoppel defense without prejudice.

Procedural Background

On September 23, 1998, Defendants filed a Motion to Amend their answer and add a subrogation counterclaim. The Court granted that motion on November

23, 1998. Plaintiffs filed their Answer to Defendants' counterclaim on February 10, 1999. The Answer did not assert estoppel as an affirmative defense. The next month, on March 8, 1999, Plaintiffs filed an Amended Complaint and on May 13, 1999, Defendants filed a Second Amended Answer. Plaintiffs then filed a second Answer to Defendants' counterclaim on May 24, 1999, but did not assert estoppel as an affirmative defense. Four days later, on May 28, 1999, Plaintiffs filed an Amended Answer in which they added estoppel as an affirmative defense.

Discussion

The Court is satisfied that, based on the pleadings before it, Plaintiffs' estoppel defense is premature. Plaintiffs assert that their estoppel defense is "in anticipation of events that may give rise to it" Pls.' Resp. at 4. Defendants reply by stating that Plaintiffs' estoppel defense "can only be construed as a defense to a proceeding that may occur in the future to determine the Defendants' *actual interest* in any recovery against Maine Medical Center." Defs.' Reply at 4 (italics added). As Judge Carter stated in his November 23, 1998 Order, a distinction exists between whether Defendants have a *subrogate interest* from whether Defendants have a *right to subrogation*.

In its Order the Court held that whether Defendants have "the *right of subrogation* with respect to medical bills for which PFL is deemed responsible is

ripe for adjudication. . .” in this matter. *Metayer v. PFL Life Ins. Co.*, Civ. 98-177-P-C (D. Me.). However, the Court also stated that “whether or not PFL has a *subrogate interest* in a particular case, including the medical malpractice action already pending in state court, will be determined by that court according to the liability established in that action.” *Id.* (italics added).

Likewise, here, whether the Defendants are estopped from asserting a *subrogate interest* in this case, or in the case pending in state court, is a question that will be determined once liability is established by the court presiding over the particular case in which the interest is raised. Therefore, I recommend that the Court GRANT Defendants’ motion and that the Court STRIKE Plaintiffs’ estoppel defense without prejudice.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on: August 27, 1999