CITIZENS UNITED RECIPROCAL	:	
EXCHANGE,	:	NEW JERSEY SUPERIOR COURT
Plaintiff	:	GLOUCESTER COUNTY
v.	:	LAW DIVISION
	:	**CIVIL ACTION- CBLP CASE**
SUMMIT PHARMACY, INC, et.al.	:	Docket No. GLO-L-1212-15
Defendants	:	

MEMORANDUM OF DECISION

This matter comes before the court on a motion to dismiss for lack of subject matter jurisdiction. The motion, so late in the game of this now ten-year-old litigation, results from the recent decision of Gov't Emps. Ins. Co. v. Mount Prospect Chiropractic Ctr., 101 F.4th 272 (3d. Cir. 2024) decided in April of this year by the U.S. Court of Appeals for the 3rd Circuit, that upholds the defendants' requests in that case to arbitrate IFPA claims. For reasons the are unique to the present set of facts, and for this court's belief that the Third Circuit got it wrong, the motion to dismiss is hereby DENIED.

In the present case, CURE has sued Summit Pharmacy, Inc., multiple healthcare providers and their practice entities alleging violations of the New Jersey Insurance Fraud Prevention Act ("IFPA") which are based upon claims of improper steering of patients to Summit Pharmacy services and to anti-kickback laws. Factually, the plaintiff alleges that Summit Pharmacy induced medical providers who treat injured plaintiffs (who derive their medical benefits from PIP) from auto accident cases to utilize Summit Pharmacy for their prescription needs. This oftentimes resulted in the use of extremely expensive compound medications which were billed to CURE under the patients' PIP policies. It is alleged that Summit provided the medical practices and doctors lavish parties, concert and sports tickets to further their scheme.

The impetus for compelling arbitration in the Mt. Prospect case and in this case comes from the 1983 revision of New Jersey's No-Fault Law that now requires PIP benefit disputes to be resolved through arbitration rather than through the courts. The

purpose of the change was to establish an informal system of settling PIP claims without the need for court resources. The Legislature again significantly amended the No Fault statute with the passage of the Automobile Insurance Cost Reduction Act ("AICRA") in 1998. That statute, N.J.S.A. 39:6A-1 *et seq.,* mandates the speedy first-party payments of PIP benefits, including medical expenses, income continuation benefits, essential services to persons injured in automobile accidents without any consideration of fault. The dispute resolution proceedings arising out of PIP disputes are called PIP arbitrations. The current administrator of, and forum for, all New Jersey PIP arbitrations is Forthright, which sets the rules for PIP arbitrations.

The defendants' argument advanced here and in Mt. Prospect is that all claims arising from PIP benefits must be arbitrated in Forthright. Since this dispute arises out of PIP benefit claims, it must be arbitrated as well. This logic as it applies to IFPA claims is simply wrong, and the logic of the Third Circuit court is wrong. First, the Third Circuit talks about how the IFPA claims in that case can be handled in AAA arbitration which gives the arbitrator broad discretion to "grant any remedy or relief". However, the Third Circuit clearly does not understand that PIP claims are arbitrated by Forthright, where the DRP's do not have similar discretion as AAA arbitrators. As a matter of fact, nowhere in the Mt. Prospect decision is Forthright ever mentioned.

The PIP regulation, N.J.A.C. 11:3-5.2 does not include IFPA claims. It defines "PIP disputes" to include a wide range of typical PIP controversies, but it does not contain fraud claims. Moreover, IFPA claims are not found within even a liberal reading of AICRA which provides that any dispute regarding the *recovery* of PIP benefits arising out of the ownership, maintenance or use of an automobile **may** be submitted to dispute resolution on the initiative of any party to the dispute. The Third Circuit simply ignored the permissive language contained in N.J.S.A. 39:6A-5.1(a), and concluded that the statute compelled the IFPA claim to be submitted to PIP arbitration. This is simply wrong. Moreover, N.J.S.A. 39:6A-4 limits those who can participate in PIP arbitration are insureds, eligible injured parties and medical providers who have a valid assignment of benefits who seek *the payment* of PIP benefits. The claims are specifically these parties against an insured who has presumably improperly withheld payment. Nowhere does the statute suggest that an insurer who alleges fraud by a medical provider in pursuing fraudulent claims is required to arbitrate those claims.

The IFPA specifically mentions the role of the court in N.J.S.A. 17:33A-5 and N.J.S.A. 17:33A-7, wherein the statute specifically confers the right of an insurance company to "sue therefor in any court of competent jurisdiction." The statute confers a similar right to the Commissioner of the Department of Banking and Insurance. Additionally, the statute addresses the remedy for a violation of the IFPA, which states in pertinent part that, "[T]he court shall award court costs and reasonable attorneys' fees to

the commissioner", and as to the private successful cause of action, treble damages are available if "the court determines that the defendant has engaged in a pattern of violating this act". The Legislature clearly and unequivocally granted the Superior Court as the proper venue for adjudication of IFPA claims.

The Third Circuit also ignored the dictates of the New Jersey Supreme Court who has the final say in interpreting the Act in Allstate v. Lajara, 222 NJ 129 (2015). The court concluded that there was a right to a jury trial based upon the damages authorized by the IFPA. The Court stated, "in summary, the right to a jury trial under Article 1, Paragraph 9 of the New Jersey Constitution is triggered because the IFPA provides legal relief in the form of compensatory and punitive damages.." It further noted that these forms of damages are traditionally offered in the courts of law. The Third Circuit when addressing Lajara, does so in two simple sentences. They say, "It [plaintiff/GEICO] notes that IFPA plaintiffs have a jury trial right. Lajara, 177 A.3d at 1234. But GEICO does not explain why it cannot waive that right by agreeing to arbitrate." So, it appears that the Third Circuit dismisses a Constitutional right acknowledged by our highest court by posturing that a plaintiff who has this right must waive it even when it chooses not to. The right to a jury cannot be dismissed so flippantly. To summarize, our Legislature and our Supreme Court have clearly mandated that IFPA claims are to be litigated in the Superior Courts, and the Third Circuit's attempts to explain away this mandate is puzzling and unpersuasive.

Lastly, as pointed out in the CURE's brief, the documents relied upon by the Third Circuit in Mt. Prospect are significantly different than the documents in the case at bar. In this case, the Summit defendant as well as the other defendants have requested a jury trial in their answers to plaintiff's complaint. Moreover, CURE's Decision Point Review Plans and the Summit defendants' Assignment of Benefits do not mandate ADR unlike the same documents in the Mt. Prospect case.

For all of the reasons set forth above, the defendants' motion to dismiss for lack of subject matter jurisdiction is DENIED.

SO ORDERED this 26th day of August, 2024.

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JAMES R. SWIFT JSC