

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

GOVERNMENT EMPLOYEES
INSURANCE CO., GEICO
INDEMNITY CO., GEICO
GENERAL INSURANCE COMPANY,
and GEICO CASULTY CO.,

Plaintiffs,

v.

Case No. 8:20-cv-2419-VMC-CPT

AFO IMAGING, INC. d/b/a
ADVANCED DIAGNOSTIC GROUP,
RADIOLOGY IMAGING
SPECIALISTS, LLC d/b/a
CAREFIRST IMAGING, KEVIN
JOHNSON, CHINTAN DESAI,
ROBERT D. MARTINEZ, and
STANLEY ZIMMELMAN,

Defendants.

ORDER

This matter comes before the Court upon consideration of Defendants AFO Imaging, Inc. d/b/a Advanced Diagnostic Group, Kevin Johnson, Dr. Chintan Desai, Dr. Robert D. Martinez, and Dr. Stanley Zimmelman's (collectively, the "Advanced Diagnostic Defendants") Motion to Dismiss (Doc. # 36), filed on January 4, 2021. Plaintiffs Government Employees Insurance Co., Geico Indemnity Co., Geico General Insurance Company, and GEICO Casualty Co. responded on January 19, 2021. (Doc. # 46). For the reasons set forth below, the Motion is denied.

I. Background

Plaintiffs are motor vehicle insurers that have reimbursed Defendants for certain personal injury protection insurance ("PIP insurance") covered radiology procedures. (Doc. # 1 at ¶¶ 1, 9). Defendants are medical diagnostic centers and medical diagnostic center owners or directors. (Id. at ¶¶ 10-15). Advanced Diagnostic owns and operates multiple Florida diagnostic centers, with eight locations in Tampa, Brandon, Lakeland, Kissimmee, Orlando, and Palm Beach Gardens. (Id. at ¶ 10). During the relevant time periods, Plaintiffs allege that Kevin Johnson was the owner of Advanced Diagnostic. (Id. at ¶ 12). Dr. Chintan Desai is a radiologist who serves or served as the medical director of Advanced Diagnostic's Tampa, Brandon, and Orlando locations. (Id. at ¶¶ 11, 15). Dr. Robert Martinez is a physician who serves or served as the medical director of Advanced Diagnostic's Lakeland location. (Id. at ¶ 13). Dr. Stanley Zimmelman is a physician who serves or served as the medical director of four of Advanced Diagnostic's locations - in Tampa, Palm Beach Gardens, Kissimmee, and Orlando. (Id. at ¶ 14).

Plaintiffs aver that the Advanced Diagnostic Defendants entered into two related fraudulent schemes. First, Defendants allegedly submitted or caused to be submitted

thousands of PIP insurance charges for medically unnecessary, falsified radiology services, namely for magnetic resonance imaging ("MRIs"). (Id. at ¶¶ 1, 7). Second, the Advanced Diagnostic medical centers allegedly operated in violation of Florida law because their medical directors failed to properly perform their duties. (Id. at ¶¶ 120-38).

In the first alleged fraudulent scheme, Plaintiffs aver that the Advanced Diagnostic Defendants repeatedly billed them for medically unnecessary MRIS from at least 2015 to the present. (Doc. # 1 at ¶ 48). In support of this allegation, Plaintiffs provide a substantial number of examples of PIP-covered patients who were "involved in relatively minor, low-speed, low-impact 'fender-bender' accidents," and sustained only minor, soft tissue injuries - to the extent that they suffered any injuries at all. (Id. at ¶¶ 50-52, 53). These patients either did not seek treatment at a hospital following their accident or were discharged shortly thereafter without being admitted. (Id. at ¶ 51). Following these relatively minor accidents, the patients visited an Advanced Diagnostic clinic, where an employee performed an MRI as an initial diagnostic tool, despite the fact that "[i]n a legitimate clinical setting, MRIs should not be used as an initial form of diagnostic testing in the treatment of patients

complaining of soft tissue injuries such as sprains secondary to automobile accidents.” (Id. at ¶¶ 55-58, 63). This is because most “soft tissue injuries such as sprains and strains will resolve over a period of weeks through conservative treatment, or no treatment at all.” (Id. at ¶ 66).

Not only did a substantial number of patients involved in these minor accidents receive MRIs, but they also received substantially the same MRIs. (Id. at ¶ 70). The Advanced Diagnostic Defendants “routinely purported to perform and/or provide both cervical and lumbar MRIs with respect to [patients] who had not been seriously injured in their accidents, did not plausibly require both cervical and lumbar MRIs (or any MRIs), and in any case did not require cervical and lumbar MRIs as a first-line diagnostic test, before they had failed a legitimate course of conservative treatment.” (Id. at ¶ 71). This is also despite the fact that these patients were different ages, heights, weights, were in different physical conditions and locations within the vehicle, and the locations of impact differed. (Id. at ¶¶ 73-78). Plaintiffs provide a number of representative examples. (Id. at ¶ 79). For instance:

On June 28, 2017 two Insureds - JK and KG - were involved in the same automobile accident. JK and KG were different ages, in different physical

condition, and experienced the impact from different positions in the vehicle. To the extent that they suffered any injuries at all in the accident, their injuries were different, and resolved at different rates. They did not require substantially identical MRIs on the same date as their accident. Even so, Advanced Diagnostic, Johnson, Zimmelman, and Desai submitted bills to GEICO for MRI scans purportedly performed on the cervical spine and lumbar spine of both JK and KG at AD-Kissimmee on June 28, 2017.

* * *

On March 29, 2019, two Insureds - BD and JD - were involved in the same automobile accident. BD and JD were different ages, in different physical condition, and experienced the impact from different positions in the vehicle. To the extent that they suffered any injuries at all in the accident, their injuries were different, and resolved at different rates. They did not require substantially identical MRIs on or about the same date after their accident. Even so, Advanced Diagnostic, Johnson, Martinez, and Desai submitted bills to GEICO for MRI scans purportedly performed on the cervical and lumbar spines of BD and JD at AD-Lakeland on April 18, 2019.

(Id.).

After performing these unnecessary MRIs, Plaintiffs allege that the Advanced Diagnostic Defendants falsely diagnosed these patients "in order to make it appear as if the [patients] had suffered from serious injuries as the result of their automobile accidents, when in fact they had not." (Id. at ¶ 83). In support of this, Plaintiffs provide a number of examples of Advanced Diagnostic patients who were

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