

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 Radiology Imaging Specialists, LLC d/b/a CareFirst Imaging and Dr. Chintan Desai's (collectively, the "CareFirst Defendants") Motion to Dismiss (Doc. # 38), filed on January 11, 2021. Plaintiffs Government Employees Insurance Co., Geico Indemnity Co., Geico General Insurance Company, and GEICO Casualty Co. responded on January 24, 2021. (Doc. # 47). For the reasons set forth below, the Motion denied.

I. Background

Both the Court and the parties are familiar with the facts underlying this case. Therefore, the Court need not reiterate them in detail. Plaintiffs are motor vehicle insurers that have reimbursed the CareFirst Defendants for certain personal injury protection insurance (“PIP insurance”) covered radiology procedures. (Doc. # 1 at ¶¶ 1, 9). Dr. Desai is a physician and the owner of CareFirst, a company that operates two medical diagnostic facilities in Ocala and Leesburg, Florida. (Id. at ¶¶ 3, 11, 15).

Plaintiffs posit that the CareFirst 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 CareFirst diagnostic centers allegedly operated in violation of Florida law because the clinics neither qualified for licensure, nor did they have a legitimate medical director. (Id. at ¶ 138).

Plaintiffs filed this suit on October 16, 2020. (Doc. # 1). The complaint includes the following relevant causes of action: declaratory judgment against CareFirst (Count I), violations of Section 1962(c) of the Racketeer Influenced and

Corrupt Organizations Act ("RICO") against Dr. Desai (Count IX), violations of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") against the CareFirst Defendants (Count X), violations of the Florida RICO counterpart against Dr. Desai (Count XI), common law fraud against the CareFirst Defendants (Count XII), and unjust enrichment against the CareFirst Defendants (Count XIII). (Doc. # 1).

On January 4, 2021, Dr. Desai and the other defendants in this case, AFO Imaging, Inc. d/b/a Advanced Diagnostic Group, Kevin Johnson, Dr. Robert D. Martinez, and Dr. Stanley Zimmelman (collectively, the "Advanced Diagnostic Defendants"), filed a motion to dismiss the complaint. (Doc. # 36). On February 25, 2021, the Court denied the Advanced Diagnostic Defendants' motion. (Doc. # 50). On January 11, 2021 - one week after the initial motion to dismiss was filed - the CareFirst Defendants filed the instant Motion. (Doc. # 38). Plaintiffs have responded (Doc. # 47), and the Motion is now ripe for review.

II. Legal Standard

On a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), this Court accepts as true all the allegations in the complaint and construes them in the light most favorable to the plaintiff. Jackson v. Bellsouth

Telecomms., 372 F.3d 1250, 1262 (11th Cir. 2004). Further, the Court favors the plaintiff with all reasonable inferences from the allegations in the complaint. Stephens v. Dep't of Health & Human Servs., 901 F.2d 1571, 1573 (11th Cir. 1990).

But,

[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quotations and citations omitted). Courts are not "bound to accept as true a legal conclusion couched as a factual allegation." Papasan v. Allain, 478 U.S. 265, 286 (1986). The Court must limit its consideration to "well-pleaded factual allegations, documents central to or referenced in the complaint, and matters judicially noticed." La Grasta v. First Union Sec., Inc., 358 F.3d 840, 845 (11th Cir. 2004).

The Federal Rules of Civil Procedure accord a heightened pleading standard to claims for fraud, requiring that they be pled with particularity. Fed. R. Civ. P. 9(b). Under Rule 9(b), the "plaintiff must allege: (1) the precise statements, documents, or misrepresentations made; (2) the time, place,

and person responsible for the statement; (3) the content and manner in which these statements misled the [p]laintiffs; and (4) what the defendants gained by the alleged fraud.” Am. Dental Ass’n v. Cigna Corp., 605 F.3d 1283, 1291 (11th Cir. 2010) (quoting Brooks v. Blue Cross & Blue Shield of Fla., Inc., 116 F.3d 1364, 1380-81 (11th Cir. 1997)).

This “requirement serves an important purpose in fraud actions by alerting defendants to the precise misconduct with which they are charged and protecting defendants against spurious charges of immoral and fraudulent behavior.” W. Coast Roofing and Waterproofing, Inc. v. Johns Manville, Inc., 287 F. App’x 81, 86 (11th Cir. 2008) (quoting Ziemba v. Cascade Int’l, Inc., 256 F.3d 1194, 1202 (11th Cir. 2001)).

III. Analysis

The CareFirst Defendants move to dismiss the claims against them, arguing that (1) the applicable statutes of limitations have expired, (2) Plaintiffs failed to follow certain statutory pre-suit requirements, (3) the Court should decline jurisdiction under the primary jurisdiction doctrine, (4) the Court should dismiss or stay the case under various abstention doctrines, (5) Plaintiffs’ RICO claims are reverse preempted by the McCarran-Ferguson Act, and (6) the complaint fails to plead fraud with specificity. (Doc. # 38).

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