

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

MAURICE R. GARDNER, DPM, et al.,)
)
Plaintiffs,)
)
v.)
)
PODIATRY INSURANCE COMPANY)
OF AMERICA,)
)
Defendant.)

Civil No. 06-147-B-W

RECOMMENDED DECISION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

Maurice R. Gardner, DPM, commenced a civil action in state court against Podiatry Insurance Company of America seeking to recover insurance proceeds on a policy that insured his podiatry practice against malpractice and personal injury/premises liability claims. Podiatry Insurance Company removed the action to this court. Now pending are the parties' cross-motions for summary judgment, which request a declaration regarding whether or not insurance coverage exists in relation to the settlement of a certain underlying litigation. I recommend that the Court deny Dr. Gardner's motion and grant Podiatry Insurance Company's motion.

Facts

The following statement of facts is drawn from the parties' Local Rule 56 statements of material fact in accordance with this District's summary judgment practice. See Doe v. Solvay Pharms., Inc., 350 F. Supp. 2d 257, 259-60 (D. Me. 2004) (outlining the procedure); Toomey v. Unum Life Ins. Co., 324 F. Supp. 2d 220, 221 n.1 (D. Me. 2004) (explaining "the spirit and purpose" of Local Rule 56). Pursuant to Rule 56 of the Federal Rules of Civil Procedure, all evidentiary disputes appropriately generated by the parties' statements have been resolved, for

purposes of summary judgment only, in favor of the non-movant. Merch. Ins. Co. v. U.S. Fid. & Guar. Co., 143 F.3d 5, 7 (1st Cir. 1998).

Maurice R. Gardner, DPM, and his podiatry practice, Dr. M. Gardner, DPM, PA, were insured by Podiatry Insurance Company of America (PICA) under a contract of insurance. (Pl.'s Statement of Material Facts (PSMF) ¶ 1; Def.'s Statement of Material Facts (DSMF) ¶ 5.) Dr. Gardner's practice paid all of the premiums that were ever owed to PICA. (PSMF ¶ 4.) The contract of insurance that is at issue consists of a policy (Policy 05-1PD-0011191) covering the period February 1, 2005, through February 1, 2006, that affords coverage for "claims made" against the insured during the policy period because of malpractice ("Coverage A") or because of bodily injury, property damage or personal injury arising out of the ownership, maintenance or use of the business premises ("Coverage B"). (DSMF ¶¶ 5, 26; see also Policy 05-1PD-0011191, King Aff. Ex. 6, Docket No. 11, Elec. Attach. 11.) After reciting the Coverage A and Coverage B provisions, the policy sets forth the following, separately numbered "insuring agreement":

3. Non-Practicing Podiatrist Malpractice and Personal Injury Liability: If during the period of this insurance an individual podiatrist who is a Named Insured shall terminate his practice as a podiatrist because of death or physical or mental condition, illness, injury or disability that renders him unable or incapable of performing or continuing the practice of his profession, then, and only in that event, this policy shall extend to apply to claims for damages because of malpractice or personal injury committed or caused by the Insured during the policy period stated in the Schedule; PROVIDED ALWAYS THAT there is no prior policy or policies under which the Insured is entitled to indemnity for such malpractice or personal injury; and PROVIDED FURTHER THAT a legally qualified medical practitioner shall certify that such physical or mental condition, illness, injury or disability:

- (a) has existed continuously for not less than six (6) months;
- (b) has rendered the Insured unable or incapable of performing or continuing the practice of his profession; and
- (c) is expected to be continuous and permanent.

(PSMF ¶ 18; DSMF ¶ 64.) Personal injury is defined, in pertinent part, as follows:

(2) The publication or utterance of a libel or slander or of other defamatory or disparaging material . . . except when published or uttered by, at the direction of, or with the consent or acquiescence of the Insured who has predetermined to commit such act . . . without legal justification.

(PSMF ¶ 19.) The fourth insuring agreement states as follows:

4. It is a condition precedent to coverage under this policy that all claims be reported in compliance with the section CLAIMS 1: Notice of Claim or Suit.

(DSMF ¶ 80.) The specified "CLAIMS" section provides as follows:

1. Notice of Claim or Suit: As a condition precedent to his right to the protection afforded by this insurance, the Insured shall, as soon as practicable, give to the Company written notice of any claim made against him. In the event suit is brought against the Insured, the Insured shall IMMEDIATELY forward to the Company every demand, notice, summons or other process received by him or by his representatives.

(Id.) The policy's exclusions are written in terms of coverage A and coverage B. There are exclusions "under coverage A" and exclusions "under coverage B." The policy does not contain any exclusionary language referring specifically to exclusions "under insuring agreement 3."

In April of 2003, two former employees of Dr. Gardner's practice filed charges of discrimination against the practice. They alleged that Dr. Gardner discriminated against them based on certain comments he made in the workplace. (PSMF ¶ 5.) The Maine Human Rights Commission charge forms and the related narratives are available in the record, attached to PICA's statement of material facts as exhibits 1 and 2 of the Rohd Affidavit. (Docket No. 11, Elec. Attach. 15 & 16.) They present what are quite clearly harassment/disparate treatment claims based on sex and disability. (Id.) The narratives included with the charges recount instances in which Dr. Gardner allegedly talked about the employees' medical conditions with third parties. (PSMF ¶ 5; DSMF ¶ 7.) It is apparent from the narratives that Dr. Gardner's knowledge or opinions concerning the employees' medical conditions did not come to him by

way of a doctor-patient relationship, but through office talk occasioned by the employment relationship.

The parties are agreed that the allegations by Dr. Gardner's former employees did not trigger any duty to defend or indemnify on the part of PICA in 2003 because the claims were not covered under the policy in effect when the claims were filed. (PSMF ¶ 6; DSMF ¶ 8.) The Maine Human Rights Commission concluded that there was probable cause to believe that Dr. Gardner had engaged in disability discrimination in regard to one employee's charge. (PSMF ¶ 9; DSMF ¶ 9.) In September 2004 the employees brought their claims to state court, asserting claims of sex and disability discrimination and a claim for unpaid wages. (PSMF ¶ 11; DSMF ¶ 15; see also Verified Compl., Rohm Aff. Ex. 6, Docket No. 11, Elec. Attach. 20.) The parties agree that the PICA policy in effect at that time similarly did not afford either a defense or indemnity to Dr. Gardner's practice. (PSMF ¶¶ 13-14; DSMF ¶¶ 17-19.)

In April of 2005, Dr. Gardner decided to retire from the practice of podiatry and he gradually closed his practice, seeing his last patient in June of 2005 and shuttering the office in July of 2005. (PSMF ¶¶ 16-17; DSMF ¶ 32.) According to Dr. Gardner, his decision to discontinue his practice arose from mental and physical ailments. (PSMF ¶¶ 15-16, 22.) Dr. Gardner advised PICA of his decision to end his practice in July of 2005. (PSMF ¶ 22; DSMF ¶ 33.) Upon receipt of the notification, PICA forwarded the following policy endorsement to Dr. Gardner:

OPTIONAL EXTENSION COVERAGE

In consideration of the payment of an additional premium as set forth below and subject to all the terms, limits of liability, exclusions, and conditions of the policy, this policy is extended to apply to CLAIMS MADE AGAINST THE INSURED during the applicable period of any statute of limitations following immediately after 07/01/2005, the effective date of cancellation of non-renewal of the policy. This extension shall apply only to claims arising out of malpractice or personal

injury which happened subsequent to the Retroactive Date specified in the Schedule hereof, namely 12/12/1979, and prior to the effective date of such cancellation of non-renewal.

Additional Premium \$.00

Limits of Liability See Declaration Page

All other terms and conditions remain unchanged.

Attached to and forming part of Policy Number 05-1PD-0011191

Effective 07/01/2005

Insured Maurice R. Gardner, DPM

Issue Date 07/01/2005

(DSMF ¶ 34; King Aff. Ex. 8, Docket No. 11, Elec. Attach. 13.)

In September 2005, Dr. Gardner executed a durable power of attorney appointing Linda L. Langley his attorney-in-fact and Ms. Langley proceeded to conduct all of Dr. Gardner's business and legal affairs, including matters related to the settlement of the discrimination law suit. (DSMF ¶¶ 40-42.) Under Ms. Langley's direction, Dr. Gardner contacted PICA by phone and notified it of the discrimination suit commenced by his former employees in 2004. This call was the first notice provided to PICA of the claims. (Id. ¶¶ 44-45.) By letter dated September 27, PICA denied that any coverage was available for the claims. (PSMF ¶ 28; Letter of Denial, Docket No. 14, Elec. Attach. 3.) On or about September 30, 2005, Dr. Gardner¹ and Dr. Gardner's former employees arrived at mutually acceptable terms for settlement of the discrimination suit and so advised the state court, which commemorated the matter in an order dated October 26, 2005. (DSMF ¶¶ 47-48; see also Court Order, Hart Aff. Ex. 3, Docket No. 11, Elec. Attach. 4.) Dr. Gardner attests that the matter was fully settled on or about November 24, 2005 (PSMF ¶ 29), which date corresponds with the deadline for payment of settlement proceeds

¹ I continue to refer to Dr. Gardner for convenience even though Ms. Langley was acting on his behalf in regard to the ongoing litigation against the practice.

set forth in the court's order. A written settlement agreement and release was fully executed on November 14, 2005. (DSMF ¶ 62.)

Dr. Gardner attests that a "certificate" by his doctor, Dr. Leslie C. Harding, "was provided to PICA on November 3, 2005, stating and certifying that [his] physical and/or mental conditions, illness, injury or disability (a) had existed continuously for not less than six months; (b) rendered [him] unable or incapable of performing or continuing the practice of [his] profession; and (c) were expected to be continuous and permanent." (PSMF ¶ 23.) PICA denies receiving a "certificate" in November 2005 (Def.'s Opposition to PSMF ¶ 23, Docket No. 18), but acknowledges receiving a letter from Dr. Harding in October 2005 that outlined the circumstances of Dr. Gardner's disability and included the opinions that he was "totally disabled since April 8, 2005," and that the disability was "likely to be permanent." (Harding Dep. Ex. 2, Docket No. 11, Elec. Attach. 33.) Dr. Gardner's counsel has submitted an affidavit in which he attests to sending a more formal certification to PICA "shortly after November 3, 2005." (PSMF ¶ 40, citing Bates Aff. ¶ 8, Docket No. 15, citing Executed Certification of Dr. Harding, Docket No. 14, Elec. Attach. 2.) The parties agree that Dr. Gardner was able to treat patients with uncomplicated problems through June 2005 (DSMF ¶¶ 57-58; Pl.'s Opp'n to DSMF ¶¶ 57-58, Docket No. 22), which is in tension with Dr. Harding's assertion that Dr. Gardner was totally disabled as of April 2005. On December 2, 2005, counsel for PICA reiterated PICA's denial of coverage and, among other things, formally acknowledged Dr. Gardner's assertion of a right to additional coverage under Insuring Agreement 3. (PSMF ¶ 42, citing Dec. 2, 2005 Rohd Letter, Docket No. 14, Elec. Attach. 4.)

Discussion

"The role of summary judgment is to look behind the facade of the pleadings and assay the parties' proof in order to determine whether a trial is required." Plumley v. S. Container, Inc., 303 F.3d 364, 368 (1st Cir. 2002). A party moving for summary judgment is entitled to judgment in its favor only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A fact is material if its resolution would "affect the outcome of the suit under the governing law," and the dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In reviewing the record for a genuine issue of material fact, the Court must view the summary judgment facts in the light most favorable to the nonmoving party and credit all favorable inferences that might reasonably be drawn from the facts without resort to speculation. Merch. Ins. Co. v. United States Fid. & Guar. Co., 143 F.3d 5, 7 (1st Cir. 1998). If such facts and inferences could support a favorable verdict for the nonmoving party, then there is a trial-worthy controversy and summary judgment must be denied. ATC Realty, LLC v. Town of Kingston, 303 F.3d 91, 94 (1st Cir. 2002).

Dr. Gardner contends in his motion for summary judgment that he is entitled to coverage from PICA under Insuring Agreement 3 of the 2005-2006 policy to cover the cost of his defense and settlement of the underlying discrimination suit. (Pl. Mot. Summ. J. at 2, 10.) As I understand it, Dr. Gardner maintains that Insuring Agreement 3 affords greater coverage than what was otherwise available under Coverage A or Coverage B for claims made within the 2005-2006 policy period because the "claims made" language does not appear in Insuring Agreement 3

and the definition of personal injury includes the "utterance of . . . disparaging material." (Id. at 9-10, 13.) In effect, Dr. Gardner asserts that the policy is not a claims made policy insofar as Insuring Agreement 3 is concerned. In its motion for summary judgment, PICA argues that Insuring Agreement 3 does not afford any additional coverage that would encompass the discrimination claims that were filed prior to the policy period covered by the policy in question. (Def.'s Mot. Summ. J. at 13-14.) PICA also contends that Insuring Agreement 3 is inapplicable under the facts of this case because when Dr. Gardner's practice was closed the Optional Extension Coverage supplanted the coverage made available under Policy 05-1PD-0011191. (Def.'s Opp'n to Pl.'s Mot. Summ. J. at 2-4, Docket No. 17.) For the sake of argument, I have considered whether either Insuring Agreement 3 or the Optional Extension Coverage, or both together, could somehow be read to afford coverage under the facts of this case. I start with Insuring Agreement 3, which is repeated here for ease of reference:

3. Non-Practicing Podiatrist Malpractice and Personal Injury Liability: If during the period of this insurance an individual podiatrist who is a Named Insured shall terminate his practice as a podiatrist because of death or physical or mental condition, illness, injury or disability that renders him unable or incapable of performing or continuing the practice of his profession, then, and only in that event, this policy shall extend to apply to claims for damages because of malpractice or personal injury committed or caused by the Insured during the policy period stated in the Schedule; PROVIDED ALWAYS THAT there is no prior policy or policies under which the Insured is entitled to indemnity for such malpractice or personal injury; and PROVIDED FURTHER THAT a legally qualified medical practitioner shall certify that such physical or mental condition, illness, injury or disability:

- (a) has existed continuously for not less than six (6) months;
- (b) has rendered the Insured unable or incapable of performing or continuing the practice of his profession; and
- (c) is expected to be continuous and permanent.

Upon reading Dr. Gardner's memorandum in support of his motion for summary judgment, it is rather difficult to understand Dr. Gardner's theory of how Insuring Agreement 3 of the 2005-

2006 policy applies to claims made against his practice prior to February 1, 2005. My immediate impression of the issue is that, even if the utterances in question fall under the policy's definition of personal injury, the utterances were not "committed or caused by the Insured during the policy period stated in the Schedule" and, therefore, cannot fall within the coverage described in Insuring Agreement 3. The policy's declarations page, or schedule, recites a policy period of February 1, 2005, through February 1, 2006, and the utterances occurred in 2003 or prior. This problem is entirely glossed over in Dr. Gardner's motion. However, in his opposition to PICA's motion, Dr. Gardner explains that he regards the Optional Extension Coverage extended to him in July 2005 as having redefined "policy period" to mean any date between the policy's retroactive date of December 12, 1979 (when PICA first insured Dr. Gardner's practice), and a terminal date established by the statute of limitation applicable to the claims in question. (Pls.' Opp'n Mem. at 1-3, Docket No. 19.) I repeat the language for ease of reference:

OPTIONAL EXTENSION COVERAGE

In consideration of the payment of an additional premium as set forth below and subject to all the terms, limits of liability, exclusions, and conditions of the policy, this policy is extended to apply to CLAIMS MADE AGAINST THE INSURED during the applicable period of any statute of limitations following immediately after 07/01/2005, the effective date of cancellation of non-renewal of the policy. This extension shall apply only to claims arising out of malpractice or personal injury which happened subsequent to the Retroactive Date specified in the Schedule hereof, namely 12/12/1979, and prior to the effective date of such cancellation of non-renewal.

Additional Premium \$.00

Limits of Liability See Declaration Page

All other terms and conditions remain unchanged.

Attached to and forming part of Policy Number 05-1PD-0011191

Effective 07/01/2005

Insured Maurice R. Gardner, DPM

Issue Date 07/01/2005

In summary, Dr. Gardner contends that Insuring Agreement 3 and the Optional Extension Coverage, when read in conjunction, negate the "claims made" nature of the policy and obligate PICA to "extend" coverage to all claims ever filed against the practice, so long as the applicable statute of limitation has not yet run on the claims.

The function of the court "is not to make a new contract for the parties by enlarging or diminishing its terms, but is to ascertain the meaning and intention of [the contract] *actually made*." Apgar v. Commercial Union Ins. Co., 683 A.2d 497, 500 (Me. 1996) (citations and internal quotation marks omitted) (emphasis in original). "In Maine, courts first examine relevant policy language to determine whether it is unambiguous; if so, it is enforced as written." W. World Ins. Co. v. Am. and Foreign Ins. Co., 180 F. Supp. 2d 224, 230 (D. Me. 2002). Language of an insurance contract is ambiguous only if it is reasonably susceptible to more than one plausible interpretation when measured "from the viewpoint of 'an average person, untrained in either the law or the insurance field, in light of what a more than casual reading of the policy would reveal to an ordinarily intelligent insured.'" Peerless Ins. Co. v. Wood, 685 A.2d 1173, 1174 (Me. 1996); see also Am. Employers' Ins. Co. v. DeLorme Pub. Co., Inc., 39 F.Supp.2d 64, 82 (D. Me. 1999). Whether ambiguity exists and the meaning of an insurance contract are questions of law. Foremost Ins. Co. v. Levesque, 2005 ME 34, ¶ 7, 868 A.2d 244, 246.

I conclude that the language of Insuring Agreement 3 cannot reasonably be construed as providing coverage for personal injuries committed or caused prior to the policy period stated in the schedule of Policy 05-1PD-0011191, which began February 1, 2005. I so conclude because I consider it unreasonable to construe the language of either Insuring Agreement 3 or the Optional Extension Coverage as having retroactive application. Although they clearly extend or expand coverage, they do so only prospectively. Insuring Agreement 3 plainly states that the liability

coverage for podiatrists who are not practicing due to disability extends to claims "committed or caused . . . during the policy period"; that is, to claims that have been caused but not yet made. This provision extends the coverage available under the policy because Coverage A and Coverage B are otherwise limited to covering only "claims made" within the policy period, whether or not the claims arise from conduct occurring within the period. Thus, a podiatrist forced to discontinue practicing due to disability would be covered even on claims made *beyond* the policy period arising from conduct engaged in during the policy period. But for Insuring Agreement 3, the podiatrist would not be covered under the policy for conduct he or she engaged in within the policy period if a claim was not made until after the expiration of the policy period. This is so because there would only be coverage under Coverage A or Coverage B if the podiatrist renewed the policy in the year in which the claim was eventually made. This is the obvious and the only coverage extension afforded by Insuring Agreement 3; there is no reasonable construction of its language that extends coverage backward in time to bygone claims from bygone years.

Although Insuring Agreement 3 extends coverage for future claims made beyond the temporal bounds of the policy period, it still leaves a coverage gap. This coverage gap exists because liability may exist on a claim related to conduct in a past year for which a claim is not filed until after the expiration of the current policy's period. "Claims made" coverage under all prior policies and the existing policy would be inapplicable to such a claim because it was not made while those policies were in place. Nor would coverage be available under Insuring Agreement 3 because the conduct giving rise to such a claim would not have occurred within the current policy's period. This gap does not exist under the Optional Extension Coverage. That policy endorsement affords coverage on any claim made following the cessation of the practice,

based on conduct engaged in during any of the years in which the practice was insured, provided that the claim is made "following immediately after 07/01/2005," the date Dr. Gardner shuttered his practice. Like Insuring Agreement 3, the Optional Extension Coverage extends coverage only prospectively to claims yet to be made. It does not extend coverage for liability arising from situations in which a claim was both caused *and made* in bygone years.

The foregoing construction of the provisions in question is the plain and ordinary construction that would be given by a prudent person of ordinary intelligence who gave Insuring Agreement 3, the Optional Extension Coverage and the remaining policy provisions more than cursory study. The fact that Dr. Gardner has to support his position by blending together the language of Insuring Agreement 3 and the Optional Extension Coverage, without regard for the obvious way in which each provision affords coverage for different exposures, reflects that his construction has little to do with plain and ordinary meaning. But even entertaining this position that the two provisions should be read in tandem, it is readily apparent that the temporal language of the Optional Extension Coverage (which describes a large period of time reaching back to 1979) applies exclusively to the Optional Extension Coverage, not to any other extension. Thus:

This extension shall apply only to claims arising out of malpractice or personal injury which happened subsequent to the Retroactive Date specified in the Schedule hereof, namely 12/12/1979, and prior to the effective date of such cancellation of non-renewal.

This language makes no reference to and has no implicit relation to the temporal scope of the coverage articulated under Insuring Agreement 3. Accordingly, I conclude that, as a matter of law, there is no reasonable construction of either Insuring Agreement 3 or the Optional

Extension Coverage provision, or of both together, that would support the plaintiffs' claim for insurance proceeds in this case.²

The foregoing construction, if adopted, would call for judgment to enter in favor of the defendant on Count I (declaratory judgment) and Count II (breach of contract). PICA has also moved for summary judgment on the remaining counts (III—unfair claims practices; IV—infliction of severe emotional distress; and V—breach of covenant of good faith). (Def. Mot. Summ. J. at 16-19.) In opposition to the motion, Dr. Gardner argues only that these claims should survive because Count II should. (Pls.' Opp'n Mem. at 9.) He offers no argument why any of these claims should survive if judgment is entered for PICA on Counts I and II. Still, for the sake of completeness, I address these claims on the merits. As for unfair claims practices (Count III), Maine law provides a right to a civil action against an insurer when an injury arises to an insured by virtue of one of the following actions taken by the insurer:

- A. Knowingly misrepresenting to an insured pertinent facts or policy provisions relating to coverage at issue;
- B. Failing to acknowledge and review claims, which may include payment or denial of a claim, within a reasonable time following receipt of written notice by the insurer of a claim by an insured arising under a policy;
- C. Threatening to appeal from an arbitration award in favor of an insured for the sole purpose of compelling the insured to accept a settlement less than the arbitration award;
- D. Failing to affirm or deny coverage, reserving any appropriate defenses, within a reasonable time after having completed its investigation related to a claim; or
- E. Without just cause, failing to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear.

² The parties spend some time arguing about whether coverage, assuming it existed, would have been voided by virtue of the timing of the notice Dr. Gardner gave to PICA of the discrimination suit or by the timing of the settlement of the underlying claims. Because I consider the policy language to quite clearly not afford coverage, I fail to understand why the Court should need to resolve this ancillary debate.

24-A M.R.S.A. § 2436-A. The summary judgment record simply does not disclose any factual controversy that would warrant a trial on any of these theories of liability. As for Counts IV and V, they are both quite clearly precluded by Maine law under the facts of this case. The Law Court has foreclosed claims for emotional distress and bad faith in garden-variety cases involving the alleged breach of a contract of insurance:

In a claim by an insured against its insurer, tort recovery must be based on actions that are separable from the actual breach of contract. "In order to secure emotional distress and punitive damages in this action, [an insured] must demonstrate that [the insurer] committed independently tortious conduct beyond the denial of [the] claim." Colford v. Chubb Life Ins. Co. of Am., 687 A.2d [609,] at 616 [(Me. 1996)] (emphasis in original); Marquis v. Farm Family Mut. Ins. Co., 628 A.2d 644, 652 (Me. 1989) ("We therefore refuse to adopt an independent tort action for an insurer's breach of the implied contractual obligation to act in good faith and deal fairly with an insured, and limit an insured's remedies for breach of the duty to the traditional remedies for breach of contract . . .").

Stull v. First Am. Title Ins. Co., 2000 ME 21, ¶ 14, 745 A.2d 975, 980. Based on Dr. Gardner's failure to adduce any evidence of conduct of the kind identified in 24-A M.R.S.A. § 2436-A or any other conduct that might fairly be regarded as independently tortious, I recommend that the Court grant PICA's motion for summary judgment with respect to Counts III, IV and V.

Conclusion

For the reason set forth above, I RECOMMEND that the Court GRANT the defendant's motion for summary judgment (Docket No. 10) and DENY the plaintiffs' motion for partial summary judgment (Docket No. 12).

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) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy

thereof. A responsive memorandum and any request for oral argument before the district judge 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.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

April 18, 2007

GARDNER et al v. PODIATRY INSURANCE
COMPANY OF AMERICA MUTUAL COMPANY
Assigned to: JUDGE JOHN A. WOODCOCK, JR
Referred to: MAG. JUDGE MARGARET J.
KRAVCHUK

Date Filed: 11/21/2006
Jury Demand: Plaintiff
Nature of Suit: 110 Insurance
Jurisdiction: Diversity

Case in other court: Kennebec County Superior Court,
CV-06-00219

Cause: 28:1332 Diversity-Insurance Contract

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Plaintiff

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represented by **DANIEL W. BATES**

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