

PROCEDURAL HISTORY

Counsel submitted arbitration briefs and "memorandum of authorities".

The parties also submitted stipulated facts and stipulated documents into evidence as set forth in "Stipulation of Facts and Admission of Documents for Arbitration" dated April 13, 2015, all of which were received into evidence and attached hereto and, by this reference, is incorporated herein.

Counsel then presented oral argument and agreed to further telephonic argument on May 4, 2015.

Thereafter, counsel submitted written final arguments with hard copies of numerous authorities. The matter was also set for additional oral argument on May 7, 2015.

Counsel then advised the Arbitrator that oral argument was waived.

Respondents' May 1, 2015 letter brief asserted the issue of unconscionability for the first time and cited A & M Produce Co. v. FMC Corp. 135 Cal3d 478 (1982).

On May 7, 2015, the Arbitrator began his review of the stipulated facts, the documentary evidence, and the law and determined that it was appropriate to request further briefing regarding unconscionability.

On May 9, 2015, the Arbitrator requested further additional briefing on this issue.

Further briefing ensued, and the matter was submitted for decision on May 27, 2015.

ISSUES

Claimant KAISER asserts its entitlement under the Kaiser Permanente Traditional Plan (The Plan- Exhibit 1) and under the law to assert its lien for reimbursement in the amount of \$33,333.33.

Respondents assert no right of reimbursement pursuant to:

1. "Made Whole Rule";
2. A purported requirement that the insurer must participate in the underlying action; and,
3. Unconscionability.

MADE WHOLE RULE

The Plan specifically allows the right of full reimbursement even if the insured is not made whole (Exhibit 1).

PARTICIPATION

Although the insurer may participate, there is no requirement that the insurer (KAISER) must participate in the underlying action in order to assert its lien. Travelers Indemnity Co. v. Ingebretsen 38 Cal3d 858.

UNCONSCIONABILITY

The Respondents argue unconscionability of the Plan. The Plan allows a recovery by KAISER which does not exceed the maximum amount allowed under Civil Code Section 3040 (Exhibit 1, the Plan document, page 43).

There has been no evidence presented that the Plan “shocks the conscience” or that it is procedurally or is substantively unconscionable.

See Serafin v. Balco Properties, Mar. 17, 2015, DJDAR 3048 re procedural and substantive unconscionability

AWARD

Respondents and are ordered to reimburse Claimant KAISER FOUNDATION HEALTH PLAN, INC. in the amount of the lien pursuant to Civil Code Section 3040 in the amount of \$33,333.33 forthwith.

Each party shall bear their own attorney’s fees and costs.

I, LAWRENCE W. CRISPO, do hereby affirm upon my oath as Arbitrator, that I am the individual described herein and who executed this instrument which is my Award.

DATED: June 7, 2015

/s/ Lawrence W. Crispo

HON. LAWRENCE W. CRISPO (ret.)

“Nothing in this arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care.”

Telephone:
Facsimile:

Attorneys for Respondent

IN THE MATTER OF THE ARBITRATION BETWEEN

)	No. 13345
)	
)	ORDER GRANTING RESPONDENT'S
)	MOTION FOR SUMMARY JUDGMENT
Claimant,)	
vs.)	Arbitration Date: July 13-15, 2015
)	
)	
)	
)	
Respondent.)	
_____)	

The Motion for Summary Judgment by Respondent,
 _____, came on regularly for hearing on June 10, 2015 before the Neutral Arbitrator Hon.
 Lawrence W. Crispo, Ret'd. Appearing on behalf of moving party was _____, Esq. of the law
 offices of _____ . Appearing on behalf of Claimant were
 _____ and _____ .

After full consideration of the submitted papers and evidence, and after hearing oral argument,
 the Neutral Arbitrator finds that there are no triable issues of material fact to demonstrate Respondent

breached the standard of care. Claimant did not offer admissible evidence in opposition, sufficient to demonstrate the existence of a triable issue of material fact. The Neutral Arbitrator further finds there are no triable issues of fact to demonstrate Respondent caused or contributed to Claimant's injuries. Claimant did not offer admissible evidence in opposition, sufficient to demonstrate the existence of a causal connection between an alleged breach and Claimant's injuries.

To the extent Claimant's Opposition was to be considered her own Motion for Summary Judgment, the Neutral Arbitrator denies that Motion on the grounds it was untimely, and does not meet the requirements of *Code of Civil Procedure* section 437c.

IT IS HEREBY ADJUDGED, AND DECREED that Summary Judgment be entered in favor of Respondent and against Claimant

Nothing in this arbitration decision prohibits or restricts the enrollee from discussing or reporting the underlying facts, results, terms and conditions of this decision to the Department of Managed Health Care.

DATED: June ^{17-18 2015} , 2015

July 11, 2015

L. W. Crispo

By: /s/ Lawrence W. Crispo
HON. LAWRENCE W. CRISPO, RET'D.