UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

GOVERNMENT EMPLOYEES INSURANCE COMPANY, *et al.*,	:	
Plaintiffs,	:	**DECISION AND ORDER**
- against -	:	14 Civ. 57 (BMC)
IAN PRESCOTT, M.D., *et al.*,	:	
Defendants.	:	

COGAN, District Judge.

This is yet another case arising out of the well-publicized abuse of New York's no-fault insurance system. Like other such schemes, the one at issue in this case involved an elaborate ruse to create illegitimate medical corporations and, through them, to submit no-fault medical insurance claims that were false or otherwise not permitted by law. Plaintiffs brought this suit seeking a declaration that they are not liable for such claims and a money judgment to recover payments already made on them, plus additional damages under the federal Racketeer Influenced and Corrupt Organizations statute ("RICO"), 18 U.S.C. § 1962 *et seq.*[1]

The case is before me on plaintiffs' motion for a default judgment against those defendants who have not been voluntarily dismissed. They are: Mikhail Kremerman; Yuriy Zayonts; Vladislav Zaretskiy (collectively "Management Defendants"); and Neil Morgenstern, M.D. Only defendant Zayonts has appeared in this action, having appeared through counsel to request four extensions of his time to answer, after which he apparently abandoned his defense of the case. After his fourth extension, he failed to further appear and his default was entered.

[1] Plaintiffs do not seek a default judgment as to their declaratory judgment claim.

The allegations in the complaint are well pled as to each claim for relief, and plaintiffs have submitted adequate proof of the amounts owed to obviate the need for an inquest. The defaulting defendants have not opposed the instant motion, and their time to do so has passed. Plaintiffs' motion is therefore granted.

BACKGROUND

The fraudulent scheme alleged in this case, spearheaded by the management defendants, involved three purportedly separate medical professional corporations ("PCs") that submitted millions of dollars in bogus and fraudulent billing to GEICO. All three managing defendants not only pled guilty to this scheme, but they are currently incarcerated, serving multi-year sentences for their roles as ringleaders.

The way it worked, in essence, was that the management defendants paid Dr. Ian Prescott, a physician who was a defendant and has been terminated from this case, for the use of his name and medical license to form the three PCs.[2] Under New York law, to collect no-fault insurance benefits, such professional corporations must be both owned and, more importantly, controlled by the holder of the professional license. See State Farm Mutual Auto Ins. Co. v. Mallela, 44 N.Y.3d 313 (2005). Moreover, in order for the professional corporation to be paid for services rendered, those services must be provided by the licensee or a licensed employee of the corporation.

The management defendants evaded this requirement by representing to the State Department of Education (the relevant licensing body) that Dr. Prescott owned and controlled the PCs, when in fact he did so only on paper. The management defendants derived the full benefit of ownership, including the benefit of payments for the fraudulently billed services.

[2] According to the Complaint, Dr. Prescott was aware of only one of these illegal PCs.

In some instances, the PCs then provided medically useless and otherwise unreimburseable services, including examinations and electrodiagnostic testing, to GEICO's insured customers who had been involved in automobile accidents. These services were, in part, performed by independent contractors purporting to be employees of the PCs, including Dr. Morgenstern. In other instances, no services were provided at all.

The scheme therefore had two aspects: (1) the illegal use of professional corporations – they were not permitted under state law to submit any bills at all, either because the management defendants were the beneficial owners of the PCs, and/or because the medical services were not rendered by the licensee or licensed employees of the PCs; and (2) the submission of claims that were false, unnecessary, or otherwise not reimbursable.

Plaintiffs seek compensatory damages for defendants' alleged violation of RICO § 1962(c) and (d), common law fraud, and unjust enrichment, aiding and abetting fraud (against defendant Morgenstern), treble damages under RICO, and prejudgment interest.

DISCUSSION

Under Rule 55(a) of the Federal Rules of Civil Procedure, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). The Rule provides for a two-step process leading to the entry of default judgment. See Enron Oil Corp. v. Diakuhara, 10 F.3d 90, 95-96 (2d Cir. 1993). First, as already has happened in this case, the Clerk of Court notes the entry of default on the docket. Second, if that party fails to appear or otherwise move to set aside the default pursuant to Rule 55(c), the Court may enter a default judgment. See Fed. R. Civ. P. 55(b).

Here, plaintiffs' complaint adequately sets forth each of the elements of their three claims against the management defendants (RICO, fraud, and unjust enrichment), and of their aiding and abetting claim against Dr. Morgenstern. These substantive allegations as to liability are deemed true for purposes of this motion.

Of course, defendants' default says nothing about the extent of damages that plaintiffs are entitled to recover from them, because a default does not constitute an admission as to the damages alleged in the complaint. See Greyhound Exhibitgroup, Inc. v. E.L.U.L. Realty Corp., 973 F.2d 155, 158 (2d Cir. 1992). The Court "must ensure that there is a basis for the damages specified in a default judgment" and "may, but need not, make the determination through a hearing." Fustok v. ContiCommodity Servs., Inc., 873 F.2d 38, 40 (2d Cir. 1989).

For the most part, plaintiffs' damages are straightforward. Since the management defendants were prohibited by law from submitting claims, plaintiffs have simply taken the amounts for which they were billed and that they paid and seek to recover those amounts. They have adequately documented the amount of these payments.

Moreover, plaintiffs are entitled to treble damages on their RICO claims. See 18 U.S.C. § 1964(c). New York law allows for prejudgment interest of 9% on their fraud claims. See N.Y. C.P.L.R. § 5001(a); Quintel Corp., N.V. v. Citibank, N.A., 606 F. Supp. 898, 913-14 (S.D.N.Y. 1985). Plaintiffs have conservatively requested that interest run from the first day following the year in which payments were made. See C.P.L.R. § 5001(b). Finally, because the award of damages is in part based on RICO conspiracy claims, all liability of the defendants is joint and several. See State Farm Mut. Auto. Ins. Co. v. Kalika, No. 04CV4631, 2007 WL 4326920, at *9 (E.D.N.Y. Dec. 7, 2007); See also Gov't Employees Ins. Co. v. Infinity Health Products, Ltd., No. 10–CV–5611, 2012 WL 1427796, at *9 (E.D.N.Y. Apr. 6, 2012) ("In a RICO conspiracy,

defendants are jointly and severally liable for all of plaintiff's damages, even those with which an individual defendant was not personally involved.").

CONCLUSION

Plaintiffs' motion for a default judgment is granted. Judgment will be separately docketed forthwith.

SO ORDERED.

U.S.D.J.

Dated: Brooklyn, New York
December 22, 2014