

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JAY MINERLEY and TIM SINGLETON,
Individually and as Class Representatives,

Plaintiffs,

v.

AETNA, INC., AETNA HEALTH, INC.
(a NJ Corp.), AETNA HEALTH
INSURANCE CO., AETNA LIFE
INSURANCE CO., and THE RAWLINGS
COMPANY, LLC,

Defendants.

No. 1:13-cv-01377-JHR-KMW

CIVIL ACTION

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs, Jay Minerley and Tim Singleton, individually and as class representatives for all similarly situated individuals who are covered by non-ERISA pre-empted health insurance policies, excluding non-ERISA governmental and church plans, and have had liens, subrogation and/or repayment demands asserted by Defendants, Aetna, Inc., Aetna Health, Inc. (a NJ corp.), Aetna Health Insurance Co., Aetna Life Insurance Co. (collectively "Aetna") and The Rawlings Company LLC ("Rawlings"), (hereinafter collectively referred to as "Defendants"), as against their personal injury recoveries, by and through their undersigned counsel, bring this Complaint and alleges as follows:

INTRODUCTION

1. Plaintiffs, and all other similarly situated members of the class they seek to represent, were covered by non-ERISA pre-empted health insurance plans, excluding non-ERISA governmental and church plans, issued by Aetna and sustained personal injuries for which they sought recovery and have had liens, subrogation demands and/or repayment demands asserted against them by the Defendants. The Defendants violated New Jersey's anti-subrogation laws (N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10) by asserting liens, subrogation demands and/or demands for repayment from Plaintiffs' personal injury recoveries. As a consequence, the Plaintiffs, and other members of the class they seek to represent, are entitled to recover from the Defendants their actual damages, treble damages, punitive damages, attorney fees, interest, costs and other equitable relief.

PARTIES

2. Plaintiff, Jay Minerley, is an adult individual, sui juris, who was injured in a motor vehicle accident in Morris County, New Jersey.

3. Plaintiff, Tim Singleton, is an adult, sui juris, who was insured under a policy of health insurance issued in and subject to the laws of New Jersey.

4. Plaintiffs, and other similarly situated members of the proposed class they seek to represent, were covered by non-ERISA pre-empted health insurance plans, excluding non-ERISA governmental and church plans, issued by Aetna in, and subject to the laws of, the State of New Jersey and sustained personal injuries for which they sought recovery and have had liens, subrogation demands and/or repayment demands asserted against them by the Defendants.

5. Plaintiffs bring this action on their own behalf and, pursuant to Rule 4:32, on behalf of all other persons similarly situated.

6. Aetna, Inc. is a Corporation duly authorized and licensed to issue insurance policies and conduct business in the State of New Jersey, and in fact conducts business in Atlantic County and throughout all of New Jersey.

7. Aetna Health, Inc. is a New Jersey corporation duly authorized and licensed to issue insurance policies and conduct business in the State of New Jersey, and in fact, conducts business in Atlantic County and throughout all of New Jersey.

8. Aetna Health Insurance Company is a corporation duly authorized and licensed to issue insurance policies and conduct business in the State of New Jersey, and in fact conducts business in Atlantic County and throughout all of New Jersey.

9. Aetna Life Insurance Company is a corporation duly authorized and licensed to issue insurance policies and conduct business in the State of New Jersey, and in fact conducts business in Atlantic County and throughout all of New Jersey.

10. Rawlings is a limited liability company duly authorized to conduct business in the State of New Jersey, and in fact, conducts business in Atlantic County and throughout all of New Jersey.

FACTUAL ALLEGATIONS

11. Aetna specializes in offering a broad range of health insurance products and related services.

12. Rawlings specializes in healthcare subrogation services. At all times relevant hereto, Rawlings acted as an agent and servant on behalf of Aetna.

13. Based on the specialized health insurance services and products they offer in New Jersey, Defendants knew or should have known that health insurance liens, subrogation and reimbursement are prohibited under New Jersey law.

14. On or about May 20, 2010, plaintiff Jay Minerley was involved in a motor vehicle accident in Morris County, New Jersey, wherein he sustained serious injuries and received benefits under a health insurance policy issued in and subject to the laws of New Jersey.

15. On or about December 4, 2006, plaintiff Tim Singleton was involved in a motor vehicle accident in which he sustained serious injuries and received benefits under a health insurance policy issued in and subject to the laws of New Jersey.

16. As a result of the injuries sustained in the above referenced accidents, Plaintiffs sought and received medical benefits through non-ERISA pre-empted health insurance policies issued to them by Defendant Aetna.

17. Plaintiffs filed civil lawsuits against the respective tortfeasors involved in each motor vehicle accident, asserting that such tortfeasors caused the motor vehicle accidents and were thus liable to Plaintiffs for their resulting damages.

18. Rawlings, acting as an agent for Aetna, has asserted, and continues to assert, a lien, subrogation claim and/or demand for reimbursement for the benefits which Aetna paid as against Plaintiffs' personal injury recoveries.

19. Plaintiff Jay Minerley has made payment to Defendants in response to the Defendant's lien, subrogation and/or repayment demands.

20. The Defendants actions were part of a purposeful practice and plan to collect money from insureds when such lien, subrogation claim and/or repayment demand was known to be unlawful.

21. The Defendants' actions were pursuant to a common policy and practice with respect to the Plaintiffs and as to all other class members.

CLASS ALLEGATIONS

22. Plaintiffs, on behalf of themselves and the members of the Class, repeat and re-allege the allegations of the preceding paragraphs as though fully restated herein.

I. DEFINITION OF THE CLASS

23. Plaintiffs, and the other similarly situated individuals, constitute a class within the meaning of Rule 4:32 of the Rules Governing the Courts of the State of New Jersey.

24. The Class is defined as all of those individuals who had health insurance coverage through non-ERISA pre-empted plans, excluding non-ERISA governmental and church plans, issued by Aetna in and subject to the laws of New Jersey and against whom Aetna directly, or indirectly through its agent, Rawlings, has asserted liens, subrogation demands and/or demands for repayment from their personal injury recoveries.

II. NUMEROSITY

25. The Class is so numerous as to render joinder of all members impracticable as Aetna is one of the largest health insurers in the U.S., with over 100,000 members in the State of New Jersey alone. The identities of a majority of the Class members are presently unknown but are ascertainable through appropriate discovery.

III. EXISTENCE AND PREDOMINANCE OF COMMON ISSUES

26. Common questions of law and fact are applicable to all members of the Class.

27. The common questions of law and fact arise from and concern the following facts and actions:

- a. all Class members are covered by non-ERISA pre-empted health insurance plans, excluding non-ERISA governmental and church plans, issued by Aetna under and subject to the laws of the State of New Jersey;
- b. all Class members received health benefits from Aetna as a result of personal injuries they sustained; and

c. the Defendants asserted liens, subrogation claims and/or reimbursement demands to all of the Class members in violation of New Jersey's anti-subrogation laws.

28. The questions of law and fact common to the members of the Class, as above noted, predominate over any questions affecting only individual members, and thus, this class action is superior to other available methods for the fair and efficient adjudication of this controversy.

IV. TYPICALITY

29. Plaintiffs' claims are typical of the claims of other members of the Class. All such claims arise out of the Defendants' wrongful assertion of liens, subrogation claims and/or reimbursement demands against the personal injury recoveries of Plaintiffs and the proposed Class members. Plaintiffs and the proposed Class members have suffered a common injury arising out of the Defendants' common course of conduct as alleged herein.

V. ADEQUATE REPRESENTATION

30. Plaintiffs will fairly and adequately protect and represent the interests of the Class and have no interest antagonistic to, or in conflict with, those of other Class members.

31. Plaintiffs have the time and resources to prosecute this action and have retained qualified counsel who have had extensive experience in matters involving the rights of insureds and federal court litigation. Plaintiffs intend to prosecute this action vigorously for the benefit of the Class.

VI. SUPERIORITY

32. A class action is superior to other available methods for a fair and efficient adjudication of this controversy because individual joinder of all members of the Class is impractical. Furthermore, damages suffered by members of the Class may be relatively small when compared to the expense and burden of individual litigation, which would make it difficult or impossible for individual members of the Class to obtain relief. The interests of judicial economy favor adjudicating the claims of the Class on a classwide basis rather than an individual basis.

VII. RISKS OF INCONSISTENT OR VARYING ADJUDICATION

33. Class treatment is proper in this proceeding in order to avoid inconsistent or varying adjudications with respect to individual Class members. Separate actions by individual members of the Class would create a risk that adjudication of disputed issues of law or fact as to some of the former non-bargaining unit employees would be binding upon other Class members not party

to the adjudication, or would otherwise substantially impair or impede their ability to protect their interests.

34. Pursuant to R. 4:32, the Class meets all the requirements for class certification.

COUNT I

Named Plaintiffs v. Aetna

Violation of N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10

35. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

36. Rawlings, acting as an agent for Aetna, has asserted, and continues to assert, a lien, subrogation claim and/or demand for repayment for the benefits which Aetna paid as against Plaintiffs' personal injury recoveries.

37. In asserting such liens, subrogation claim and/or demand for repayment, Rawlings acted at the direction and behest, and with the permission and consent, of Aetna.

38. In asserting such liens, subrogation claim and/or demand for repayment, Rawlings acted within the course and scope of its retention by, and agency of, Aetna.

39. Pursuant to N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10, health insurers are prohibited from asserting lien, subrogation and/or reimbursement claims.

40. Defendants' assertion of liens, subrogation claims and/or demands for repayment as against Plaintiffs' personal injury recoveries is a violation of N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10.

41. As a result of Defendants' violation of N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10, Plaintiffs are entitled to declaratory, injunctive and monetary relief.

COUNT II

Named Plaintiffs v. Aetna

Breach of Contract

42. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

43. N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10 were in full force and effect at the time of issue or renewal of the health insurance policies issued by Aetna to Plaintiffs and, as such, the policies were amended by operation of law to conform with said statute and code.

44. Pursuant to N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10, health insurers are prohibited from including subrogation, liens and/or reimbursement provisions in their policies.

45. Defendants' assertion of liens, subrogation claims and/or repayment demands as against Plaintiffs' personal injury recoveries is a breach of the insurance policy contracts Aetna entered into with Plaintiffs.

46. As a result of Aetna's breach of its contracts, Plaintiffs are entitled to declaratory, injunctive and monetary relief.

COUNT III

Named Plaintiffs v. Aetna

Breach of Duty of Good Faith and Fair Dealing

47. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

48. At all times relevant hereto, Aetna was an insurer of Plaintiffs and, accordingly, owed a special duty of good faith and fair dealing to Plaintiffs as its insureds.

49. At all times relevant hereto, Aetna knew, or should have known, that New Jersey law prohibits liens, subrogation claims and reimbursement demands by health insurers.

50. Aetna's wrongful assertion of liens, subrogation claims and/or repayment demands as against Plaintiffs' personal injury recoveries was a breach of Aetna's duty of good faith and fair dealing.

51. Plaintiffs have suffered damages as a result of Aetna's breach of Aetna's duty of good faith and fair dealing.

52. As a result of Aetna's breach of its duty of good faith and fair dealing, Plaintiffs are entitled to declaratory, injunctive and monetary relief.

COUNT IV

Named Plaintiffs v. Aetna

Violation of New Jersey Consumer Fraud Act

53. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

54. The New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-19, prohibits deceptive, fraudulent and unconscionable practices and dealings in the marketing or sale of merchandise including insurance policies.

55. At the time of the issue or renewal of Plaintiffs' health insurance policies, Aetna knew, or should have known, that the inclusion of any policy provision allowing subrogation or reimbursement was a violation of New Jersey law.

56. Aetna's inclusion of lien, subrogation and/or reimbursement provisions in its health insurance policies covering Plaintiffs was a violation of the CFA.

57. As a result of Aetna's violation of the CFA, Plaintiffs are entitled to declaratory, injunctive and monetary relief, including treble damages.

COUNT V

Named Plaintiffs v. Aetna

Violation of Fiduciary Duty

Restatement (Second) of Torts § 874

58. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

59. At all times relevant hereto, Aetna was an insurer of Plaintiffs and, accordingly, had a fiduciary duty to Plaintiffs as its insureds.

60. Pursuant to Section 874(a) of the Restatement (Second) of Torts, a beneficiary in a fiduciary relationship is entitled to tort damages for harm caused by the fiduciary's breach of a duty arising out of that relationship.

61. Aetna's inclusion of lien, subrogation and/or reimbursement provisions in its health insurance policies covering Plaintiffs, and its assertion of liens, subrogation and/or repayment demands as against Plaintiffs' personal injury recoveries, was a violation of its fiduciary duty to Plaintiffs.

62. As a result of Aetna's violation of its fiduciary duty, Plaintiffs are entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT VI

Named Plaintiffs v. Aetna

Directing or Permitting Conduct of Another

Restatement (Second) of Torts § 877

63. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

64. Pursuant to Section 877 of the Restatement (Second) of Torts, a person is subject to liability if he orders or induces the tortious conduct of another, if he knows or should know of circumstances that would make the conduct tortious if it were his own.

65. At all times relevant hereto, Aetna knew, or should have known, that New Jersey law prohibits liens, subrogation claims and reimbursement demands by health insurers.

66. Despite such knowledge, Aetna retained, hired, authorized, induced and allowed Rawlings to assert liens, subrogation claims and/or repayment demands on behalf of Aetna, as against Plaintiffs' personal injury recoveries.

67. As a result of Aetna's conduct, Plaintiffs are entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT VII

Named Plaintiffs v. Aetna

Bad Faith

68. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

69. Aetna has asserted and continues to assert liens, subrogation claims and/or demands for reimbursement for benefits which it paid, as against Plaintiffs' personal injury recoveries.

70. Aetna's assertion of liens, demands for subrogation and/or reimbursement as against Plaintiffs' personal injury recoveries is in violation of New Jersey's Anti-Subrogation law.

71. Aetna knew, or should have known, that its assertion of such liens and/or demands for subrogation and/or reimbursement were unlawful.

72. Aetna purposefully chose to make such assertion of liens, demands for subrogation and/or reimbursement despite its knowledge that such conduct was unlawful.

73. Aetna engaged in a course of conduct to misrepresent policy benefits and to misrepresent material facts or policy provisions.

74. Aetna engaged in a course of conduct in which it failed to disclose pertinent benefits, coverages, terms or other conditions or provisions of its insurance policies.

75. Aetna purposefully obtained and/or attempted to obtain Plaintiffs' property through deception.

76. Aetna's conduct was purposefully and specifically designed to obtain monies from its insureds for its own financial benefit and profit.

77. As a result of Aetna's conduct, Plaintiffs are entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT VIII

Named Plaintiffs v. Aetna

Acting in Concert - Restatement (Second) of Torts § 876

78. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

79. Pursuant to Section 876 of the Restatement (Second) of Torts, a party is subject to liability if it does a tortious act in concert with, or pursuant to a common design with, another, or if it knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other.

80. At all times relevant hereto, Aetna knew, or should have known, that Aetna's inclusion of subrogation or reimbursement provisions in its health insurance policies covering Plaintiffs, and its assertion of liens, subrogation demands and/or repayment demands as against Plaintiffs' personal injury recoveries, was in violation of New Jersey law.

81. In asserting liens, subrogation demands and/or demands for repayment as against Plaintiffs' personal injury recoveries, Aetna acted in concert with, and pursuant to a common design with, Rawlings.

82. Pursuant to Section 876 of the Restatement (Second) of Torts, Aetna is liable to Plaintiffs for its assertion of liens, subrogation demands and/or demands for repayment as against their personal injury recoveries.

83. As a result of Aetna's conduct, Plaintiffs are entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT IX

Plaintiff Jay Minerley v. Aetna

Intentional Misrepresentation

84. Plaintiff Jay Minerley, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

85. Aetna represented to Plaintiff Jay Minerley that it was entitled to a lien, subrogation and/or reimbursement from his personal injury recoveries.

86. At all times relevant hereto, Aetna knew, or should have known, that New Jersey law prohibits liens, subrogation claims and/or reimbursement demands by health insurers.

87. Aetna's wrongful assertion of liens, subrogation claims and/or repayment demands as against Plaintiff Jay Minerley's personal injury recovery was an intentional misrepresentation of fact.

88. Plaintiff Jay Minerley relied to his detriment on Aetna's intentional misrepresentation of fact contained in its lien notices and subrogation and repayment demands.

89. As a result of Aetna's intentional misrepresentation of fact, Plaintiff Jay Minerley is entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT X

Plaintiff Jay Minerley v. Aetna

Conversion

90. Plaintiff, Jay Minerley, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

91. Plaintiff Jay Minerley possessed property in the form of compensation received for injuries suffered.

92. Plaintiff Jay Minerley had a right to immediate possession and use of the compensation he received for such injuries.

93. Aetna's wrongful assertion of liens, subrogation claims and/or repayment demands as against Plaintiff Jay Minerley's personal injury recovery was an unlawful interference with his right to immediate possession and use of the compensation received.

94. As a result of Aetna's unlawful interference with Plaintiff Jay Minerley's compensation, he is entitled to declaratory, injunctive and monetary relief.

COUNT XI

Plaintiff Jay Minerley v. Aetna

Violation of N.J.S.A. 2C:20-4 (Theft by Deception)

95. Plaintiff Jay Minerley, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

96. Aetna purposefully obtained property of Plaintiff Jay Minerley through deception.

97. Aetna created or reinforced a false impression.

98. Aetna failed to correct a false impression which it previously created or reinforced, or which it knew to be influencing Plaintiff Jay Minerley to whom it stood in a fiduciary or confidential relationship.

99. As a result of Aetna's conduct, Plaintiff Jay Minerley is entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT XII

Plaintiff Jay Minerley v. Aetna

Unjust Enrichment

100. Plaintiff Jay Minerley, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

101. As a result of the wrongful collection of monies by Defendants, Aetna has benefitted at the expense of Plaintiff Jay Minerley, as well as other persons similarly situated.

102. As a result of the wrongful collection of monies by Defendants, Aetna has been enriched at the expense of Plaintiff Jay Minerley, as well as other persons similarly situated.

103. As a result of the wrongful collection of monies by Defendants, Aetna's enrichment at the expense of Plaintiff Jay Minerley, and other persons similarly situated, was unjust.

104. As a result of Aetna's unjust enrichment, Plaintiff Jay Minerley is entitled to declaratory, injunctive and monetary relief.

COUNT XIII

Plaintiff Tim Singleton v. Aetna

Violation of N.J.S.A. 2C 20-4 (Attempted Theft by Deception)

105. Plaintiff Tim Singleton, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

106. Aetna attempted to purposefully obtain property of Plaintiff Tim Singleton through deception.

107. Aetna created or reinforced a false impression.

108. Aetna failed to correct a false impression which it previously created or reinforced, or which it knew to be influencing Plaintiff Tim Singleton to whom it stood in a fiduciary or confidential relationship.

109. As a result of Aetna's conduct, Plaintiff Tim Singleton is entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT XIV

Named Plaintiffs v. Rawlings

Violation of N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10

110. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

111. Rawlings, acting as an agent for Aetna, has asserted, and continues to assert, a lien, subrogation claim and/or demand for repayment for the benefits which Aetna paid as against Plaintiffs' personal injury recoveries.

112. In asserting such liens, subrogation claim and/or demand for repayment, Rawlings acted at the direction and behest, and with the permission and consent, of Aetna.

113. In asserting such liens, subrogation claim and/or demand for repayment, Rawlings acted within the course and scope of its retention by, and agency of, Aetna.

114. Pursuant to N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10, health insurers are prohibited from asserting lien, subrogation and/or reimbursement claims.

115. Defendants' assertion of liens, subrogation claims and/or demands for repayment as against Plaintiffs' personal injury recoveries is a violation of N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10.

116. As a result of Defendants' violation of N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10, Plaintiffs are entitled to declaratory, injunctive and monetary relief.

COUNT XV

Named Plaintiffs v. Rawlings

Acting in Concert - Restatement (Second) of Torts § 876

117. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

118. Pursuant to Section 876 of the Restatement (Second) of Torts, a party is subject to liability if it does a tortious act in concert with, or pursuant to a common design with, another, or if it knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other.

119. At all times relevant hereto, Rawlings knew, or should have known, that Aetna's inclusion of subrogation or reimbursement provisions in its health insurance policies covering Plaintiffs, and its assertion of liens, subrogation demands and/or repayment demands as against Plaintiffs' personal injury recoveries, was in violation of New Jersey law.

120. In asserting liens, subrogation demands and/or demands for repayment as against Plaintiffs' personal injury recoveries, Rawlings acted in concert with, and pursuant to a common design with, Aetna.

121. Pursuant to Section 876 of the Restatement (Second) of Torts, Rawlings is liable to Plaintiffs for its assertion of liens, subrogation demands and/or demands for repayment as against their personal injury recoveries.

122. As a result of Rawlings conduct, Plaintiffs are entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT XVI

Plaintiff Jay Minerley v. Rawlings

Unjust Enrichment

123. Plaintiff Jay Minerley, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

124. As a result of the wrongful collection of monies by Defendants, Rawlings has benefitted at the expense of Plaintiff Jay Minerley, as well as other persons similarly situated.

125. As a result of the wrongful collection of monies by Defendants, Rawlings has been enriched at the expense of Plaintiff Jay Minerley, as well as other persons similarly situated.

126. As a result of the wrongful collection of monies by Defendants, Rawlings' enrichment at the expense of Plaintiff Jay Minerley, and other persons similarly situated, was unjust.

127. As a result of Rawlings' unjust enrichment, Plaintiff Jay Minerley is entitled to declaratory, injunctive and monetary relief.

COUNT XVII

Plaintiff Jay Minerley v. Rawlings

Intentional Misrepresentation

128. Plaintiff Jay Minerley, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

129. Rawlings represented to Plaintiff Jay Minerley that he was subject to a lien, subrogation and/or reimbursement from his personal injury recovery.

130. At all times relevant hereto, Rawlings knew, or should have known, that New Jersey law prohibits liens, subrogation claims and/or reimbursement demands by health insurers.

131. Rawlings' wrongful assertion of liens, subrogation claims and/or repayment demands as against Plaintiff Jay Minerley's personal injury recovery was an intentional misrepresentation of fact.

132. Plaintiff Jay Minerley relied to his detriment on Rawlings' intentional misrepresentation of fact contained in its lien notices and subrogation and repayment demands.

133. As a result of Rawlings' intentional misrepresentation of fact, Plaintiff Jay Minerley is entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT XVIII

Plaintiff Jay Minerley v. Rawlings

Conversion

134. Plaintiff Jay Minerley, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

135. Plaintiff Jay Minerley possessed property in the form of compensation received for injuries suffered.

136. Plaintiff Jay Minerley had a right to immediate possession and use of the compensation he received for such injuries.

137. Rawlings' wrongful assertion of liens, subrogation claims and/or repayment demands as against Plaintiff Jay Minerley's personal injury recovery was an unlawful interference with his right to immediate possession and use of the compensation received.

138. As a result of Rawlings' unlawful interference with Plaintiff Jay Minerley's compensation, he is entitled to declaratory, injunctive and monetary relief.

COUNT XIX

Plaintiff Jay Minerley v. Rawlings

Violation of N.J.S.A. 2C:20-4 (Theft by Deception)

139. Plaintiff Jay Minerley, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

140. Rawlings purposefully obtained property of Plaintiff Jay Minerley through deception.

141. Rawlings created or reinforced a false impression.

142. As a result of Rawlings' conduct, Plaintiff Jay Minerley is entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT XX

Plaintiff Tim Singleton v. Rawlings

Violation of N.J.S.A. 2C 20-4 (Attempted Theft by Deception)

143. Plaintiff Tim Singleton, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

144. Rawlings attempted to purposefully obtain property of Plaintiff Tim Singleton through deception.

145. Rawlings created or reinforced a false impression.

146. As a result of Rawlings' conduct, Plaintiff Tim Singleton is entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT XXI

Other Similarly Situated Individuals v. Aetna and Rawlings

Violation of N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10

147. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

148. Defendants, acting pursuant to a common policy and practice, have wrongfully asserted liens, subrogation claims and/or demands for repayment as against personal injury recoveries of other similarly situated individuals who received medical benefits through non-ERISA pre-empted health insurance policies issued by Aetna.

149. Pursuant to R. 4:32, Plaintiffs assert the claims raised in this proceeding on behalf of each of the Other Similarly Situated Individuals, for them or their benefit.

150. Each of the Other Similarly Situated Individuals is similarly situated to the named Plaintiffs in respect to their rights under N.J.S.A. 2A:15-97.

151. Defendants' assertion of liens, subrogation claims and/or demands for repayment as against the Other Similarly Situated Individuals' personal injury recoveries is a violation of N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10.

152. As a result of Defendants' violation of N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10, the Other Similarly Situated Individuals are entitled to declaratory, injunctive and monetary relief.

COUNT XXII

Other Similarly Situated Individuals v. Aetna

Breach of Contract

153. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

154. N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10 were in full force and effect at the time of issue or renewal of the health insurance policies issued by Aetna to all Other Similarly Situated Individuals and, as such, the policies were amended by operation of law to conform with said statute and code.

155. Pursuant to N.J.S.A. 2A:15-97 and N.J.A.C. 11:4-42.10, health insurers are prohibited from including lien, subrogation and/or reimbursement provisions in their policies.

156. Defendants' assertion of liens, subrogation claims and/or repayment demands as against all Other Similarly Situated Individuals' personal injury recoveries is a breach of the insurance policy contracts Aetna entered into with Plaintiffs and the Other Similarly Situated Individuals.

157. As a result of Aetna's breach of its respective contracts, all Other Similarly Situated Individuals are entitled to declaratory, injunctive and monetary relief.

COUNT XXIII

Other Similarly Situated Individuals v. Aetna

Breach of Duty of Good Faith and Fair Dealing

158. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

159. At all times relevant hereto, Aetna was insurer of all Other Similarly Situated Individuals and, accordingly, owed a special duty of good faith and fair dealing to such Other Similarly Situated Individuals as its insureds.

160. At all times relevant hereto, Defendants knew, or should have known, that New Jersey law prohibits liens, subrogation claims and reimbursement demands by health insurers.

161. Defendants' wrongful assertion of liens, subrogation claims and/or demands for repayment as against the Other Similarly Situated Individuals' personal injury recoveries was a breach of Aetna's duty of good faith and fair dealing.

162. The Other Similarly Situated Individuals relied to their detriment on Defendants' intentional, misleading assertions contained in its lien notices and subrogation demands.

163. As a result of Aetna's breach of its duty of good faith and fair dealing, the Other Similarly Situated Individuals are entitled to declaratory, injunctive and monetary relief.

COUNT XXIV

Other Similarly Situated Individuals v. Aetna

Intentional Misrepresentation

164. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

165. Aetna represented to the Other Similarly Situated Individuals that it was entitled to a lien, subrogation or reimbursement from their personal injury recoveries.

166. At all times relevant hereto, Aetna knew, or should have known, that New Jersey law prohibits liens, subrogation claims and reimbursement demands by health insurers.

167. Aetna's wrongful assertion of liens, subrogation claims and/or demands for repayment as against the Other Similarly Situated Individuals' personal injury recoveries was an intentional misrepresentation of fact.

168. The Other Similarly Situated Individuals relied to their detriment on Aetna's intentional misrepresentation of fact contained in its lien notices, subrogation demands and/or repayment demands.

169. As a result of Aetna's intentional misrepresentation of fact, the Other Similarly Situated Individuals are entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT XXV

Other Similarly Situated Individuals v. Aetna

Conversion

170. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

171. The Other Similarly Situated Individuals possessed property in the form of compensation received for injuries suffered.

172. The Other Similarly Situated Individuals had a right to immediate possession and use of the compensation they received for such injuries.

173. Aetna's wrongful assertion of liens and/or subrogation claims as against the Other Similarly Situated Individuals' personal injury recoveries was an unlawful interference with such individuals' right to immediate possession and use of the compensation received.

174. As a result of Aetna's unlawful interference with the Other Similarly Situated Individuals' compensation, such individuals are entitled to declaratory, injunctive and monetary relief.

COUNT XXVI

Other Similarly Situated Individuals v. Aetna

Violation of New Jersey Consumer Fraud Act

175. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

176. The New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-19, prohibits deceptive, fraudulent and unconscionable practices and dealings in the marketing or sale of merchandise including insurance policies.

177. At the time of the issue or renewal of the Other Similarly Situated Individuals' health insurance policies, Aetna knew, or should have known, that the inclusion of any policy provision allowing liens, subrogation or reimbursement was a violation of New Jersey law.

178. Aetna's inclusion of lien, subrogation and/or reimbursement provisions in its health insurance policies covering the Other Similarly Situated Individuals was a violation of the CFA.

179. As a result of Aetna's violation of the CFA, the Other Similarly Situated Individuals are entitled to monetary damages, including treble damages.

COUNT XXVII

Other Similarly Situated Individuals v. Aetna

Violation of Fiduciary Duty

Restatement (Second) of Torts § 874

180. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

181. At all times relevant hereto, Aetna was an insurer of the Other Similarly Situated Individuals and, accordingly, had a fiduciary duty to such Other Similarly Situated Individuals as its insureds.

182. Pursuant to Section 874(a) of the Restatement (Second) of Torts, a beneficiary in a fiduciary relationship is entitled to tort damages for harm caused by the fiduciary's breach of a duty arising out of that relationship.

183. Aetna's inclusion of lien, subrogation and/or reimbursement provisions in its health insurance policies covering the Other Similarly Situated Individuals, and its assertion of liens, subrogation and/or repayment demands as against such Other Similarly Situated Individuals' personal injury recoveries, was a violation of its fiduciary duty.

184. As a result of Aetna's violation of its fiduciary duty, the Other Similarly Situated Individuals are entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT XXVIII

Other Similarly Situated Individuals v. Aetna

Directing or Permitting Conduct of Another

Restatement (Second) of Torts § 877

185. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

186. Pursuant to Section 877 of the Restatement (Second) of Torts, a person is subject to liability if he orders or induces the tortious conduct of another, if he knows or should know of circumstances that would make the conduct tortious if it were his own.

187. At all times relevant hereto, Aetna knew, or should have known, that New Jersey law prohibits liens, subrogation claims and reimbursement demands by health insurers.

188. Despite such knowledge, Aetna retained, hired, authorized, induced and allowed Rawlings to assert liens, subrogation claims and/or demands for repayment on behalf of Aetna, as against the Other Similarly Situated Individuals' personal injury recoveries.

189. As a result of Aetna's conduct, the Other Similarly Situated Individuals are entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT XXIX

Other Similarly Situated Individuals v. Aetna

Bad Faith

190. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

191. Aetna has asserted and continues to assert liens, subrogation claims and/or demands for reimbursement for benefits which it paid, as against the Other Similarly Situated Individuals' personal injury recoveries.

192. Aetna's assertion of liens, subrogation claims and/or reimbursement as against the Other Similarly Situated Individuals' personal injury recoveries is in violation of New Jersey's Anti-Subrogation law.

193. Aetna knew, or should have known, that its assertion of such liens, subrogation claims and/or reimbursement were unlawful.

194. Aetna purposefully chose to make such assertion of liens, subrogation claims and/or repayment demands despite its knowledge that such conduct was unlawful.

195. Aetna engaged in a course of conduct to misrepresent policy benefits and to misrepresent material facts or policy provisions.

196. Aetna engaged in a course of conduct in which it failed to disclose pertinent benefits, coverages, terms or other conditions or provisions of its insurance policies.

197. Aetna purposefully obtained and/or attempted to obtain the Other Similarly Situated Individuals' property through deception.

198. Aetna's conduct was purposefully and specifically designed to obtain monies from its insureds for its own financial benefit and profit.

199. As a result of Aetna's conduct, the Other Similarly Situated Individuals are entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT XXX

Other Similarly Situated Individuals v. Rawlings

Acting in Concert - Restatement (Second) of Torts § 876

200. Plaintiffs, on behalf of themselves and other persons similarly situated, repeat and re-allege the allegations of the preceding paragraphs as if fully restated herein.

201. Pursuant to Section 876 of the Restatement (Second) of Torts, a party is subject to liability if it does a tortious act in concert with, or pursuant to a common design with, another, or if it knows that the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other.

202. At all times relevant hereto, Rawlings knew, or should have known, that Aetna's inclusion of lien, subrogation or reimbursement provisions in its health insurance policies covering Other Similarly Situated Individuals, and its assertion of liens, subrogation claims and/or demands for repayment as against such Other Similarly Situated Individuals' personal injury recoveries, was in violation of New Jersey law.

203. In asserting liens, subrogation claims and/or demands for repayment as against the Other Similarly Situated Individuals' personal injury recoveries, on behalf of Aetna, Rawlings acted in concert with, and pursuant to a common design with, Aetna.

204. Pursuant to Section 876 of the Restatement (Second) of Torts, Rawlings is liable to the Other Similarly Situated Individuals for its assertion of liens and/or subrogation demands as against their personal injury recoveries.

205. As a result of Rawlings' conduct, the Other Similarly Situated Individuals are entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT XXXI

Other Similarly Situated Individuals v. Aetna

Violation of N.J.S.A. 2C:20-4 (Theft by Deception)

206. Plaintiff Jay Minerley, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

207. Aetna purposefully obtained property of Other Similarly Situated Individuals through deception.

208. Aetna created or reinforced a false impression.

209. Aetna failed to correct a false impression which it previously created or reinforced, or which it knew to be influencing the Other Similarly Situated Individuals to whom it stood in a fiduciary or confidential relationship.

210. As a result of Aetna's conduct, the Other Similarly Situated Individuals are entitled to declaratory, injunctive and monetary relief, including punitive damages.

COUNT XXXII

Other Similarly Situated Individuals v. Aetna

Unjust Enrichment

211. Plaintiff Jay Minerley, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

212. As a result of the wrongful collection of monies by Defendants, Aetna has benefitted at the expense of the Other Similarly Situated Individuals.

213. As a result of the wrongful collection of monies by Defendants, Aetna has been enriched at the expense of the Other Similarly Situated Individuals.

214. As a result of the wrongful collection of monies by Defendants, Aetna's enrichment at the expense of the Other Similarly Situated Individuals was unjust.

215. As a result of Aetna's unjust enrichment, the Other Similarly Situated Individuals are entitled to declaratory, injunctive and monetary relief.

COUNT XXXIII

Other Similarly Situated Individuals v. Aetna

Violation of N.J.S.A. 2C 20-4 (Attempted Theft by Deception)

216. Plaintiff Tim Singleton, on behalf of himself and other persons similarly situated, repeats and re-alleges the allegations of the preceding paragraphs as if fully restated herein.

217. Aetna attempted to purposefully obtain property of Other Similarly Situated Individuals through deception.

218. Aetna created or reinforced a false impression.

219. Aetna failed to correct a false impression which it previously created or reinforced, or which it knew to be influencing the Other Similarly Situated Individuals to whom it stood in a fiduciary or confidential relationship.

220. As a result of Aetna's conduct, the Other Similarly Situated Individuals are entitled to declaratory, injunctive and monetary relief, including punitive damages.

WHEREFORE, Plaintiffs respectfully request the following relief:

- a. Certification that Plaintiffs, Jay Minerley and Tim Singleton, together with the Other Similarly Situated Individuals, constitute a single class and that the undersigned counsel be appointed as Class Counsel;

- b. Judgment finding that Defendants' conduct was a violation of New Jersey law and prohibiting any such further conduct;
- c. Award of Damages in favor of each named Plaintiff and each Other Similarly Situated Individual, equal to the sum of the lien, subrogation claim or reimbursement collected by Defendants and any other costs incurred relative to such lien, subrogation claim and/or repayment demand;
- d. Award of Treble Damages in favor of named Plaintiff and each Other Similarly Situated Individual pursuant to the New Jersey Consumer Fraud Act;
- e. Punitive damages under the Counts according the same as authorized and appropriate damages;
- f. All interest as allowed by law on the amounts owed under the preceding paragraphs;
- g. Reasonable attorneys' fees and costs; and
- h. Such other and further relief as this Court may deem just and proper.

JURY DEMAND

PLEASE TAKE NOTICE that the plaintiffs hereby demand a trial by jury on all issues so triable.

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Dated: May 28, 2013

Counsel for Plaintiffs