




**ORDERED** that a copy of this Order shall be deemed served upon all counsel of record in this action immediately upon filing on e-Courts.

A handwritten signature in black ink, enclosed within a rectangular border. The signature appears to read "Keith E. Lynott".

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Keith E. Lynott, J.S.C.

Opposed.

### Statement of Reasons

The Court denies the motion of Meritain Health, Inc. (“Meritain”) for reconsideration. It finds the movant has not established grounds for reconsideration.

The Court incorporates its prior Statement of Reasons granting in part and denying in part Meritain’s motion to dismiss. The Court determined, applying the standard of review required by Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739 (1989), that the Complaint stated viable claims against Meritain for promissory estoppel, negligent misrepresentation and tortious interference with prospective economic advantage.

On this motion, Meritain contends that certain documents pertaining to the handling of the Plaintiff’s claims for reimbursement for medical services and a recording that Meritain asserts one would hear upon accessing its 800 number contradict the Plaintiff’s claims that Meritain pre-authorized payment for the Plaintiff’s services. It asserts these documents and the recording explicitly state that payment is not guaranteed. Instead, according to Meritain, it at most verified that the patient’s treatment was medically necessary.

Because this was (and in effect still is) a motion to dismiss, the Court is required to limit its examination to the pleading itself and accept the averments of the subject Complaint as true. The Court may examine extrinsic materials only to the extent the same are attached to the pleading, a matter of public record or integral to the claims asserted. Banco Popular N. Am. v. Gandi, 184 N.J. 161 (2005).

Here, the Plaintiff alleges – and the Court accepts as true – that it received pre-authorization for payment from Meritain orally via telephone. The Complaint does not incorporate or refer to the documents or the recording on which Meritain relies. Such documents and the recording are not integral to the Plaintiff’s claim. That such materials may, as claimed, conflict with, contradict

or undermine the Plaintiff's pleaded assertions makes them integral to the Defendant's defense. The Court determines it may not rely on such documents in adjudicating a motion to dismiss.

Even were the Court to take up such documents or materials, they are not dispositive at this time. Without permitting discovery, it is not possible to determine the relevance or effect of such documents or materials in relation to the alleged oral promises. One cannot know, for example, if there are other relevant documents that bear on the issues that are not part of the present record. Nor can one know when the documents in this record were created or issued and/or if or when they were received by the Plaintiff, in each case in relation to either the alleged telephonic authorizations or the performance of the services. It is thus not possible to determine whether a Meritain representative authorized payment for services as alleged, and the services were performed before Meritain issued and Plaintiff received any document stating the payment was not guaranteed. The impact, if any, of such a document issued after a pre-authorization was given on the phone is a fact question bearing on the issue of reasonable reliance.

Likewise, one cannot know, without further proceedings, if the recording placed in the record is the complete message that Plaintiff actually received or if it received the same each time there was a call made. The Plaintiff alleges its representative spoke to an individual associated with Meritain. It also alleges calls to multiple numbers other than the number associated with the recording placed in the record on this motion.

Among other things, there is no authenticating Certification as to the recording, when it was created, and how and when it was used. And even if there were an authenticating Certification, the Plaintiff would be entitled to discovery to test its accuracy.

Finally, the Plaintiff has also, the Court determined, stated a viable claim for tortious interference with economic advantage. For the reasons set forth herein, none of the materials

placed in the record on this motion undermines the legal sufficiency of this cause of action. Moreover, the Plaintiff's Fourth Amended Complaint appears, on a liberal reading, to assert that Meritain permitted and benefitted from pricing of the Plaintiff's reimbursement claim at lower amounts than authorized as a cost containment measure.

The simple truth is that the Plaintiff has pleaded viable causes of action for promissory estoppel, negligent misrepresentation and/or tortious interference. Although the documents and recording placed in the record on this motion may prove to be dispositive – whether on a motion for summary judgment or to the trier of fact – there is no basis established for so determining at the pleading stage. Instead, the Plaintiff has a right to have such materials examined in the context of a full record after a reasonable opportunity for discovery.