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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BEVERLY MOLFETTA,)	Case No. 2:07-cv-01240-JCM-LRL
Plaintiff,)	ORDER
v.)	
TIME INSURANCE COMPANY, a)	
Wisconsin corporation,)	
Defendant.)	

Presently before the Court is Time Insurance Company's ("Time") Motion for Summary Judgment (Doc. #32), filed December 4, 2009. On March 17, 2008, Plaintiff Beverly Molfetta ("Plaintiff") filed an opposition to Time's Motion for Summary Judgment (Doc. #40); Time replied to the opposition on March 29, 2010 (Doc. 42). Also before the Court is Time's Motion to Strike Plaintiff's Untimely Opposition to Time's Motion for Summary Judgment, filed March 22, 2010 (Doc. #41); Plaintiff submitted a response to this motion on May 3, 2010 (Doc. #44); and Time replied on May 3, 2010 (Doc. #45). A hearing on both motions was held by the Court at 11:00 a.m. on May 4, 2010.

Due to the judicial preference of adjudicating claims on the merits, the Court has exercised its discretion and considered Plaintiff's untimely opposition, and all

1 arguments presented therein, in evaluating the merits of Time's Motion for Summary
2 Judgment.

3 Having considered the pleadings, motion papers, the record before the Court, as
4 well as the arguments of counsel, the Court finds that no genuine issues of material
5 fact remain and that summary judgment in favor of Time is appropriate.

6 Plaintiff brought this action due to Time's denial of benefits under a health
7 insurance certificate with an effective date of December 1, 2005, that named Plaintiff as
8 a dependant insured. Shortly after coverage was effective, Plaintiff submitted claims
9 for medical services related to cataracts. Time denied these claims on the ground that
10 the cataracts were a preexisting condition as defined in the certificate. During a
11 routine investigation related to these claims, and claims for medical services related to
12 arthritis, Time discovered that Mrs. Molfetta had made material misrepresentations
13 regarding her health history during the enrollment process, wherein she failed to
14 disclose her history of cataracts and arthritis. Time gave Plaintiff the option to reform
15 her coverage by accepting Special Exception Riders that excluded coverage for her
16 arthritis and cataracts. Plaintiff executed the riders as requested and her coverage was
17 reformed.

18 Plaintiff then filed suit, alleging that in denying her claims and requesting she
19 execute the aforementioned riders in lieu of outright rescission, Time breached the
20 insurance contract, breached the duty of good faith and fair dealing, and committed
21 unfair claims settlement practices in violation of N.R.S. §686A.310.

22 Summary judgment is appropriate when the evidence and pleadings on file
23 demonstrate that there is no genuine issue as to any material fact and that the movant
24 is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; *Anderson v. Liberty Lobby,*
25 *Inc.*, 477 U.S. 242, 248 (1986). Summary judgment is mandated where, after the
26 provision of ample time for discovery, the non-movant fails to make a showing
27 sufficient to establish the existence of an element essential to that party's case, and on
28 which that party will bear the burden of proof at trial. *Celotex Corp. v. Catrett*, 477 U.S.

1 317, 322 (1986). Once a motion for summary judgment demonstrates the absence of
2 genuine issues of material fact, the non-moving party must set forth "affirmative
3 admissible evidence establishing a triable issue of fact." *Thames v. LVH Corp.*, 211 Fed.
4 Appx. 618 (9th Cir. 2006); *see also Orr v. Bank of America, NT & SA*, 285 F.3d 764, 773 (9th
5 Cir. 2002) (party opposing summary judgment cannot establish triable issue of fact by
6 relying on inadmissible evidence or unauthenticated documents).

7 Here, the evidence presented by Time irrefutably demonstrates that Plaintiff had
8 a history of arthritis and cataracts that predated her application and the effective date
9 of the certificate. The evidence showed that Plaintiff failed to disclose her preexisting
10 medical conditions during the application process. Time relied on Plaintiff's
11 representations in issuing the insurance certificate and presented uncontroverted
12 evidence that Plaintiff's omissions were material to its determination to issue the
13 insurance certificate. As a result, Time properly reformed the certificate and denied
14 Plaintiff benefits for treatment of the preexisting conditions she failed to disclose.
15 Since the undisputed evidence demonstrates that Time was legally entitled to deny
16 Plaintiff's benefit claims on this basis, Plaintiff's breach of contract claim fails as a
17 matter of law.

18 Plaintiff's reliance on the state or federal health insurance portability statutes
19 does not alter this analysis. Plaintiff was covered under another group health
20 insurance carrier identified by Plaintiff as 'Oxford' at the time she and her spouse
21 applied for individual health insurance from Time. Plaintiff was therefore not an
22 "eligible" person under N.R.S. §689A.515 or under 42 U.S.C. §300gg-41(b). Plaintiff's
23 contention that the portability statutes precluded Time from invoking the preexisting
24 condition clause in the contract is unavailing.

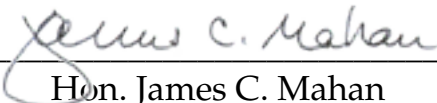
25 Since Time did not breach its contract with Plaintiff, Time could not, as a matter
26 of law, have breached the implied covenant of good faith and fair dealing. Likewise,
27 because Time's actions in denying Plaintiff's benefits for the preexisting conditions
28 were legally permissible, these actions, as a matter of law, cannot constitute unfair
claim settlement practices as defined in N.R.S. §686A.310.

1 Based on the foregoing and good cause appearing,

2 IT IS HEREBY ORDERED that Time's Motion to Strike Plaintiff's Untimely
3 Opposition to its Motion for Summary Judgment (Doc. #41) is DENIED;

4 IT IS FURTHER ORDERED that Time's Motion for Summary Judgment (Doc.
5 #32) is GRANTED. All of Plaintiff's causes of action against Time are hereby
6 DISMISSED with PREJUDICE.

7 DATED this 17th day of May, 2010.

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10 _____
11 Hon. James C. Mahan
12 United States District Judge

11 Respectfully submitted,
12 MORRIS PETERSON

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