# Mountainside Treatment Center v. United Health Group, Inc. *et al*

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# Differences between Wit and Mountainside

The Plaintiffs:

*Wit*. Plaintiff's are both plan members and beneficiaries of plans administered by UBH

Mountainside is an OON Provider of behavioral health treatment to its patients, many of whom are enrollees in the United Plans. Prior to the commencement of any treatment, Mountainside requires patients to assign their right for payment from UBH to Mountainside

The Issue:

*Wit* . UBH was denying claims to its enrollees based on UBHs level of care guidelines and UBH's coverage determination guidelines.

*Mountainside*. United is demanding recoupment for signification portions of previous payments by illegally withholding payments due for Mountainside services to subsequent patients, thereby off-setting or cross-plan offsetting by recouping its purported overpayments.

# Similarities between Wit and Mountainside

*Wit.* the Plaintiff's are plan enrollees and beneficiaries and therefore can bring a claim under ERISA.

*Mountainside.* The court has ruled, preliminarily, that Mountainside has legal assignments of both the right to receive payment and commensurate right to bring a claim under ERISA for nonpayment.

# ERISA

- Pursuant to Section 502 of ERISA, a plan participant or beneficiary may bring a civil enforcement action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."

United and other health insurers have included anti-assignment provisions into many ERISA plans.

- For Mountainside to assert claims on behalf of ERISA, they must have a legal assignment of their patient's rights, conferring a derivative standing to sue under ERISA.

# Assignment of Benefits

- Mountainside has patients sign an “Assignment of Benefits” Form

  - assigns patients right to payment

  - “UB04” – form that notes payment is requested pursuant to an assignment

  - UBH never asserted any claim that it would not pay Mountainside pursuant to the assignments until after litigation was commenced, and in fact had a multi-year history of paying such claims submitted by Mountainside.

# Findings we are seeking

Recognition of a public policy issue:

- There are valid public policy issues associated with a practice which sends a large payment to a patient who has received treatment for alcohol or drug abuse. Anecdotal evidence suggests that some patients who receive large checks from their insurance company to pay their treatment facility will instead use that money to support their addictions.

# Findings we're hoping for:

Breach of Fiduciary Duty under ERISA similar to ***<u>Wit</u>*** in that United:

1. Violated its duty of fiduciary loyalty to the plans from which payments were made and against which the cross-plan offets were deducted;
2. Violated its duty to comply with plan terms.

- By cross-plan off setting, United is in violation of its fiduciary duty under ERISA to the members of the plans that they are taking payment from.  Those members now have larger co-pays or residual payments due to Mountainside.

# Findings we’re hoping for:

Negligent misrepresentation and promissory estoppel.

Mountainside relied on a promise from United to pay Mountainside a specific amount for approved services, and also relied on the representations that UBH would honor the assignment of benefits forms signed by the patients.

# QUESTIONS