

STATE OF INDIANA )  
 ) SS:  
COUNTY OF SHELBY )

IN THE SHELBY CIRCUIT COURT  
CAUSE NO. 73C01-1607-CT-030

DECATUR COUNTY, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. )  
 )  
 ) SAGAMORE HEALTH NETWORK, )  
 ) INDIANA UNIVERSITY HEALTHCARE, )  
 ) METHODIST HOSPITAL, NEACE LUKENS, )  
 ) LLC, SOUTHEASTERN INDIANA HEALTH )  
 ) ORGANIZATION, INC., and HCC )  
 ) MEDICAL INSURANCE SERVICES, LLC., )  
 )  
 ) Defendants. )

**FILED**  
June 14, 2019  
*Jane Meltzer*  
Judge Shelby Circuit Court  
KB

**ORDER ON DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

This matter having come before the Court on Defendant Assured Partners NL, LLC f/k/a Neace Lukens, LLC’s (“Assured Partners”) Motion for Summary Judgment, and the Court having reviewed the motion with designated evidence, the brief filed in support of the motion, Plaintiff Decatur County’s Response to the motion with designated evidence, and Assured Partner’s Reply brief, and having heard argument on May 3, 2019, now finds and concludes as follows:

**FINDINGS OF FACT**

1. On November 4, 2013, Lucas Schmidt, a Decatur County employee was injured in a motor vehicle accident.

2. Schmidt was treated at Defendant Indiana University Healthcare Methodist Hospital (“IU Health”).
3. Schmidt was insured through Decatur County’s health insurance plan which offered benefits through Defendant Sagamore Health Network (“Sagamore”).
4. Sagamore was contracted by Southeastern Indiana Health Organization, Inc. (“SIHO”).
5. SIHO was the benefits administrator for Decatur County.
6. Assured Partners assisted Decatur County in the selection and implementation of health insurance and reinsurance plans, including the 2013 and 2014 stop-loss policies, and provided customer support.
7. HCC Life Insurance Company (“HCC”) was the insurer of the 2013 and 2014 stop-loss policies.
8. IU Health submitted the bill for Mr. Schmidt’s treatment to Sagamore.
9. Sagamore repriced the bill on February 6, 2014 and forwarded it to SIHO.
10. SIHO received payment from Decatur County.
11. Decatur County was reimbursed by HCC.
12. Sagamore repriced the bill again on March 14, 2014.
13. Decatur County again paid the bill through SIHO and was reimbursed by HCC.
14. Sagamore repriced the bill a third time on October 28, 2014.
15. Decatur County again paid the bill, but HCC denied reimbursement as the payment and services fell outside of the policy dates.

16. The 2013 HCC policy ended on 2/28/2014, and claims incurred during that policy year had to be paid and submitted to HCC within 90 days of the policy end date. The 2014 HCC policy did not cover any claims incurred prior to 2/29/2014.
17. Any additional facts set forth in the Conclusions of Law are incorporated herein by reference.

### CONCLUSIONS OF LAW

1. Pursuant to Ind. Trial Rule 56, the party moving for summary judgment bears the burden of coming forth with evidence showing that “there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.” Flaherty & Collins, Inc. v. BBB-Vision I, L.P., 990 N.E.2d 958, 966 (Ind. Ct. App. 2013). Once the movant has carried the initial burden of going forward under Rule 56(C), “the nonmovant must come forward with sufficient evidence demonstrating the existence of a genuine factual issue that should be resolved at trial.” Id. The non-moving party “must respond by setting forth specific facts showing a genuine issue for trial; he may not simply rest upon the allegations of his pleadings.” Benthall v. City of Evansville, 674 N.E.2d 580, 582 (Ind. Ct. App. 1996).
2. “A defendant is entitled to judgment as matter of law when [it] shows that the undisputed material facts negate at least one element of the plaintiff’s claim for relief.” Lindsey v. DeGroot, 898 N.E.2d 1251, 1256 (Ind. 2009) (internal citations omitted). “A court must grant summary judgment . against a party who fails to make a showing sufficient to

establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id.

3. Decatur County alleges that Assured Partners was negligent by failing to procure appropriate insurance coverage and for failing to advise Decatur County as to the adequacy of coverage.
4. "[A]n insurance agent or broker who undertakes to procure insurance for another is an agent of the proposed insured, and owes the proposed insured a duty to exercise reasonable care, skill, and good faith diligence in obtaining insurance. If the agent undertakes to procure the insurance and through fault and neglect fails to do so, the agent or broker may be liable for breach of contract or for negligent default in the performance of the duty to obtain insurance. The agent also incurs a duty to inform the principal if he or she is unable to procure the requested insurance." West Bend Mut. Ins. Co. v. 1st Choice Ins. Servs., 918 N.E.2d 684, 690 (Ind. Ct. App. 2009) (internal citations omitted).
5. Decatur County has presented no evidence that they requested any insurance that Assured Partners failed to provide, therefore Assured Partners did not fail to procure any insurance on behalf of Decatur County.
6. "Insurance agents potentially have both a general duty of care and a duty to advise their clients. . . [A]n insured must demonstrate some type of special relationship for a duty to advise to exist." Filip v. Block, 879 N.E.2d 1076, 1085 (Ind. 2008) (internal citations omitted).

7. “[A] duty is imposed only where a reasonably foreseeable victim is injured by reasonably foreseeable harm.” Hooks SuperX v. McLaughlin, 642 N.E.2d 514, 517 (Ind. 1994) (internal citations omitted). “[F]oreseeability as a component of duty involves a[n] . . . inquiry which requires a . . . general analysis of the broad type of plaintiff and harm involved, without regard to the facts of the actual occurrence.” Goodwin v. Yeakle’s Sports Bar & Grill, Inc., 62 N.E.3d 384, 394 (Ind. 2016) (internal citations omitted).
8. In this case, an insured is the broad type of plaintiff and the broad type of harm is that the insured would not be reimbursed for a claim that was incurred prior to March 1, 2014, but not paid and submitted to HCC by May 30, 2014.
9. The affidavits of Decatur County Auditors Janet Chadwell and Tami Wenning both state that Assured Partners informed Decatur County of the laser policy for Mr. Schmidt, and that they understood that “the lasered policy was subject to a 12/12 contract basis (which means that claims related to Lucas Schmidt would not be eligible for repayment if they were not paid timely under the 2013 policy.” Plaintiff’s Response, Exhibits 1 and 2. Additionally, Decatur County “did know medical bills incurred during the policy year ending 2/28/2014 had 90 days to be brought forward for payment in the regular scheme of things.” Id.
10. Thus, by Decatur County’s own testimony, Assured Partners fulfilled any duty to advise Decatur County of the adequacy of their insurance, assuming such duty existed.
11. Decatur County argues that Assured Partners should have warned them that IU Health and Sagamore had a contract that allowed repricing up to a year from the date of service,

but Decatur County has presented no evidence that such a contract exists, nor that Assured Partners knew or should have known the contents of that contract.

12. Decatur County has presented no evidence that Assured Partners knew or should have known that the bill would be repriced, that Assured Partners had any role in the repricing of the bill, or that Decatur County asked or received any advice from Assured Partners prior to paying the repriced bill.

### ORDER

Assured Partners' Motion for Summary Judgment is hereby granted. There being no reason for delay, a final judgment is hereby entered in favor of Assured Partners and against Decatur County on its claims against Assured Partners.

ORDERED this 14th day of June, 2019.



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Judge, Shelby Circuit Court

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