Case file No. I A Ca 1266/05
JUDGMENT
Of 23 May 2006
IN THE NAME OF THE REPUBLIC OF POLAND

The Appellate Court in Poznań, 1st Civil Division sitting in the **panel:**
Presiding Judge: Bogdan Wysocki, Judge of the Appellate Court
Judges: Małgorzata Gulczyńska, Judge Rapporteur, Judge of the Appellate Court
Andrzej Adamczuk, Judge of the Circuit Court (delegated)
Reporting Clerk: Beata Zygmańska, Senior Reporting Clerk,

upon hearing, on 10 May 2006 in Poznań, of the case brought to court by (...) Teaching Hospital against the (...) National Healthcare Fund for payment as a result of the plaintiff's appeal against the judgment of the Circuit Court in Poznań of 7 July 2005, case file No. XII C 576/04
I. amends the appealed judgment:
1. orders the defendant to pay to the plaintiff PLN 1,372,130 (one million three hundred seventy two thousand and one hundred thirty zlotys) plus statutory interest accruing from 9 March 2004 until the date of payment;
2. orders the defendant to pay to the plaintiff PLN 7,200 for costs of legal representation;
II. orders the defendant to pay to the plaintiff PLN 5,400 for costs of legal representation in the appeal proceedings.

/-/ B. Wysocki /-/ M. Gulczyńska /-/ A. Adamczuk

STATEMENT OF REASONS

(…) Teaching Hospital requested that the National Healthcare Fund be ordered to pay to the plaintiff an amount of PLN 1,372,120 plus statutory interest, accruing since the date of filing the claim, as payment for performed over-the-limit medical benefits, and that the defendant be ordered to pay the costs of proceedings.

The defendant requested that the claim be dismissed and that the plaintiff be ordered to pay the defendant's legal representation costs.

By its judgment of 7 July 2005, the Circuit Court in Poznań dismissed the claim in its entirety and ruled on the costs of proceedings. The following findings and legal conclusions were the basis of this judgment:

On 15 December 1999, the plaintiff and the legal antecedent of the defendant, (…) Health Fund, entered into a contract on terms and conditions of provision of healthcare benefits to patients covered by the universal health insurance. The parties specified the maximum annual amount of financing healthcare benefits for the year 2000. In subsequent years, these limits were renegotiated. The plaintiff is a highly specialised hospital which treats female patients suffering from medical problems that are particularly difficult to treat, including obstetric pathologies. The plaintiff has no possibility of referring its patients to another healthcare institution. Since it is impossible to accurately foresee the number of obstetric pathologies to occur in a given year, the parties indicated an estimated number of healthcare benefits when entering into contracts for each year. Under subsequent contracts, the (…) Health Fund made an effort to pay the plaintiff also for the healthcare benefits which exceeded the limits specified under the contract. In the first quarter of 2003, the (…) Health Fund was transformed into the National Healthcare Fund (NHF), which was less financially independent and had lower income. Branches of the NHF had no legal personality and the financial resources granted to them for the year 2003 by the NHF in Warsaw were lower than in the preceding year and covered only the contracted benefits. In 2003, the defendant received no additional resources and its activity ceased with a loss of PLN 42,134,140.96. Due to the above, the

defendant had no financial means to pay the plaintiff for over-the-limit healthcare benefits.

The plaintiff sent a VAT invoice No. (…) to the defendant, requesting the payment for benefits provided in emergency cases to patients with obstetric pathologies in the period between January and October 2003. The invoice amounted to PLN 1,372,130. The defendant, without questioning whether these benefits had actually been provided, refused to pay as the benefits reflected on the invoice exceeded the limits specified in the Annex to the contracts of 23 January 2003 and 14 February 2003. The plaintiff received only the amount of PLN 37,932,520, which constituted the maximum value of benefits contracted for 2003 by the parties.

In these circumstances, the Circuit Court found the request unjustified. Pursuant to Art. 53 of the Act on Universal Health Insurance, Health Funds entered into contracts for the provision of healthcare benefits with healthcare benefits providers and these contracts had to specify the maximum amount of its financial liability towards the healthcare provider. The Health Fund was obliged to enter into contracts with observance of the principle of balancing costs and income and of the principle that the total amount of liabilities of the Health Fund resulting from all the contracts was not to exceed its financial plan. Therefore, the defendant, as the legal successor of the (…) Health Fund was only able to pay to the plaintiff the amounts specified in the contracts or in annexes thereof and only to the extent of the held financial resources. The Act of 23 January 2003 on Universal Health Insurance at the National Healthcare Fund did not introduce any provisions which could serve as a legal basis for any healthcare institutions to press claims for the NHF to cover the costs of benefits exceeding the maximum amount of benefits specified in the contract entered into by a healthcare institution and the NHF for a given year. There was also no legal basis for the defendant or its antecedent to incur loans in order to pay for the benefits exceeding the limits specified in the contracts. In the opinion of the Court, also Art. 68(1,2,3) of the Constitution, quoted by the plaintiff, may not be a legal basis for his claim. The delegacy of power and the principle of public funding of healthcare benefits do not allow for the interpretation that the contracts entered into pursuant to the Act on Universal Health Insurance are not binding, and the defendant would be *ex lege* obliged to cover the costs of all the medical services provided by the healthcare benefit providers, irrespectively of whether they exceeded the limits provided for by the contracts entered into by the parties. The defendant disposes of public funds and is obliged to observe the provisions of the Public Finance Law of 25 November 1998. In a situation whereby the healthcare benefits provider provided benefits exceeding the limits stipulated in the contract concluded between him and the defendant, neither the provision of Art. 7 of the Act on Healthcare Institutions, which stipulates the obligation to provide insured persons who approach healthcare institutions with healthcare benefits, nor Art. 30 of the Act of 5 December 1996 on Practicing as a Physician, which imposes on physicians the duty to give medical assistance, constitute a sufficient basis for constructing an obligation relationship between the plaintiff and the defendant. Despite the fact that the provisions of force of law do not indicate another entity charged with the task of financing medical services in aforementioned situations, it is the opinion of the Court that the defendant certainly is not such an entity.

The Court ruled on the costs pursuant to Art. 102 of the Code of Civil Procedure read in conjunction with §6 point 7 read in conjunction with §2 point 1 of the Regulation of the Minister of Justice of 28 September 2002 on fees for services of legal counsels and on incurring the costs of unpaid legal assistance provided by state-appointed legal counsels by the State Treasury.

The plaintiff appealed this judgment in its entirety, alleging that it:

1. violates the following provisions of substantive law: Art. 65 of the Civil Code by interpreting the meaning of the contract of 15 December 1999 and of the annexes thereof of 14 February 2003 and of 25 September 2002 on the basis of its literal meaning and omitting the unanimous intent of the parties and the contract's purpose, as well as the principles of community life and established practice,

- fails to apply Art. 58 § l of the Civil Code and that its ruling is based on null provisions of the contract of 15 December 1999 and the annexes thereof which set the limits of life-saving healthcare benefits. These annexes and provisions are inconsistent with Art. 7 of the Act on Healthcare Institutions and with Art. 58(3) read in conjunction with Art. 4(1) and with Art. 65 of the Act on

Universal Health Insurance and with Art. 121 read in conjunction with Art. 72 of the Act on Universal Health Insurance at the NHF;
- fails to apply the provision of Art. 68(3) of the Constitution;
- fails to apply the provisions of substantive law, in particular by basing the ruling at issue on the provision of Art. 4(3) of the Act on 6 February 1997 on Universal Health Insurance, which is inconsistent with Art. 68 and Art. 31(3) of the Constitution,
-violates Art. 81 of the Constitution of the Republic of Poland by assuming that the claims at issue in the present proceedings may be pressed only pursuant to the provisions of the Act of 6 February 1997 on Universal Health Insurance since it was legislated as a result of delegacy of power stipulated by Art. 68 of the Constitution;
2. fails to consider the merit of the issue by not having established, in the course of the proceedings, who were the individuals to whom the plaintiff provided healthcare benefits for which he requests remuneration in the case at issue.

Due to the above, the plaintiff requested that the appealed judgment be amended in its entirety and that the defendant be ordered to pay to the plaintiff the amount in dispute and the costs of proceedings or, alternatively, that the appealed judgment be reversed and remanded for re-examination.

The defendant requested that the appeal be dismissed and that the plaintiff is ordered to pay the defendant's legal representation costs.

The Appellate Court considered the following:

The appeal is justified. A case involving the same parties, also regarding over-the-limit healthcare benefits provided by the plaintiff, but in the time period directly preceding the benefits under the present case, has already been examined by the Supreme Court, which found the plaintiff's claims justified. The Appellate Court approved the position of the Supreme Court presented in its statement of reasons for the judgment of 15 December 2005 in case II CSK 21/05.

In reference to the argumentation presented by the Supreme Court in its statement of reasons, the allegation that the judgment violates provisions of Constitution is unjustified. Art. 68 of the Constitution, in its paragraph 1, does in fact stipulate the right to the protection of health and, in its paragraph 2, the right to equal access to publicly funded healthcare benefits, within the limits set by statutes, but in its further paragraphs it only expresses the principles of state politics which, by its nature, may not be the source of direct claims of individuals (Art. 81 of the Constitution). Therefore, the allegation raised in the appeal that Art. 68(3) of the Constitution, notwithstanding the statutory exceptions, provides insured pregnant women and their children with the right to benefits which should be financed by the defendant from public funds, is groundless.

During the period covered by the present dispute (from January to October 2003), the effective law has changed. Since 1 April 2003, the Act on 23 January 2003 on Health Insurance at the National Healthcare Fund has been in force (*Dziennik Ustaw* [Journal of Laws] No. 45, item 391 as amended). It is, however, insignificant, as this law contains equivalents of provisions quoted by the defendant in his defense, that is of Art. 4(3) of the Act of 6 February 1997 on Universal Health Insurance (*Dziennik Ustaw* No. 28, item 153 as amended), which is equivalent to Art. 49 of the Act on Insurance at the NHF and of Art.4(2) of the Act on Universal Health Insurance, whose equivalent is Art. 37(1) of the Act on Insurance at the NHF. Moreover, the plaintiff derives his claims from the contract entered into with Healthcare Fund under the previous Act. Pursuant to Art. 198(1) of the Act on Health Insurance at the NHF, the NHF took over the rights and duties of the Health Funds resulting from contracts on provision of healthcare benefits prior to entering into force of the new Act. Pursuant to the same provision, these contracts were to remain binding until new contracts were entered into which, in the period of this dispute, did not occur.
Simultaneously, during the entire period significant for this dispute, the provisions of Art. 7 of the Act of 30 August 1991 on Healthcare Institutions (*Dziennik Ustaw* No. 91, item 408 as amended) were effective, as well as Art. 30 of the Act of 5 December 1996 on Practicing as a Physician

(consolidated text, *Dziennik Ustaw* of 2005, No. 226, item 1943). These provisions imposed on healthcare institutions and on physicians the duty to give medical assistance in every case in which a delay could threaten the health or life of a patient.

The Supreme Court in all of its judgments to date regarding publicly funded healthcare benefits, both quoted by the parties, and in the aforementioned judgment of 15 December 2005, which is attached to the records of the case, indicated the binding power of contracts entered into by healthcare institutions with the defendant or with its antecedent. However, in its judgment of 15 December 2005, the Supreme Court found that the plaintiff was entitled to claims for benefits provided in circumstances defined under Art. 7 of the Act on Healthcare Institutions and under Art. 30 of the Act on Practicing as a Physician, even though these benefits exceeded the contracted limits. This is because, as a principle, benefits provided to persons covered by the public health insurance are financed from public funds, that is previously by Health Funds and currently by the National Healthcare Fund. Simultaneously, there are no grounds for charging healthcare institutions with these costs. This is the conclusion that would arise from accepting the possibility of quoting by the defendant and by his antecedent of Art. 4(3) of the Act on Universal Health Insurance and of the argument of insufficient funds. Such a conclusion would be irreconcilable with Art. 30 of the Act on Practicing as a Physician pursuant to Art. 68(2) of the Constitution. An interpretation of Art. 7 of the Act on Healthcare Institutions and of Art. 30 of the Act on Practicing as a Physician which is consistent with Art. 68(2) of the Constitution leads to the conclusion that life-saving treatments should be financed from public funds, the disposer of which within the scope of healthcare benefits is currently the defendant.

In the course of the proceedings, the plaintiff has not proved that the parties, in the period of dispute, have submitted unanimous declarations of intent as to financing, also of over-the-limit benefits. In this scope, the allegations of the appeal may not be accepted. Witness B.Cz. has clearly stated that she did not participate in any negotiations with the defendant in 2003. The testimony of the plaintiff's Director only reveals that the parties were engaged in negotiations concerning execution of an annex to the effect that benefits related to obstetric pathologies are of life-saving nature and that the defendant did not question their scope. Previous practice allowed for the hope that the annex may have been concluded, there are however no grounds for finding that the defendant made declarations that it would finance the benefits defined as to their value or scope, in particular since it had not paid for over-the-limit benefits from the previous period. In such a situation and having regard for the fact that the annex which would allow for the provision of a given type of benefits also whereby the contracted limits had already been exhausted, the most credible testimony is that of witness R. S., who claimed that further payments have not been agreed upon and were to be transferred only if the Health Fund had additional funds at its disposal.

However, the opinion of the Supreme Court is that, pursuant to Art. 56 of the Civil Code, a legal transaction produces not only the effects expressed by the transaction itself, but also those provided for by the law and, pursuant to the provisions of the law, the plaintiff was charged with the duty of providing healthcare benefits in each life-threatening situation, not only within the contracted limits. The foregoing makes it possible for the plaintiff to press claims for costs incurred.

The insufficient funds, emphasized by the defendant, may not be considered sufficient grounds for dismissing the claim also because, as already found by the Supreme Court in the quoted judgment, pursuant to Art. 28(2) of the Law on Public Finance of 26 November 1998 (*Dziennik Ustaw* No. 155, item 1014 as amended), the defendant should take into account not only the expenses resulting from the Act on Universal Health Insurance, but also those resulting from other statutes, which applies to Art. 7 of the Act on Healthcare Institutions and to Art. 30 of the Act on Practicing as a Physician.

In its reply to the appeal, the defendant, besides the previously presented allegations, raised that the plaintiff has not offered evidence to prove that the provided benefits, not covered by the already transferred reimbursement, were of life-saving nature. In the course of proceedings in the First Instance, the defendant questioned the legitimacy of the claim itself, but refrained from taking a position in regards to the value of liabilities and the scope of benefits under the claim.

The case at issue is conducted by legal entities, represented by professional legal counsels from the beginning. The provision of Art. 210 § 2 of the Code of Civil Procedure charges them with the duty to express their standpoint with respect to statements presented by the opposing party and to factual circumstances. Already in its statement of claims, the plaintiff stated that it requests payment for healthcare benefits consisting in treating obstetric pathologies in emergency cases. The plaintiff states that patients are admitted as emergencies whenever the refusal to admit and treat them by the plaintiff, a highly specialised healthcare institution, could objectively threaten the health and life of mother and foetus. In a writ of 6 July 2005, the legal representative of the Hospital claimed it undisputed that the provided healthcare benefits were of life-saving nature. The defendant has made no references to these statements. In the opinion of the Appellate Court, if the NHF questioned the legitimacy of the claim by referring to, among others, the impossibility of deriving legal bases for the plaintiff's claims from Art. 7 of the Act on Healthcare Institutions and indicated that the only source of financing may be a contract which does not separate life-saving benefits from others (page 91) while, simultaneously, it did not deny in the course of the proceedings or during the negotiations between the parties that the benefits under this claim may be qualified as life-saving and did not raise that their value is different than the one presented in the statement of claims, than it is justified to assume that the scope of the provided benefits has not been questioned by the NHF. Therefore, within the meaning of Art. 230 of the Code of Civil Procedure, the plaintiff's statements regarding the nature and value of the benefits provided may have been considered accepted.

The foregoing considerations have led the Court to find the appeal justified and to amend the appealed judgment pursuant to Art. 386 §1 of the Code of Civil Procedure. It has not been questioned that the plaintiff has called upon the defendant to pay before the suit. Therefore, ruling on the accrual of interest from the date of filing the suit is justified in light of Art. 481 §1 of the Civil Code.

The costs of proceedings have been decided pursuant to Art. 98 §1 and 3 of the Code of Civil Procedure. The amount of remuneration of the plaintiff's legal counsel in the proceedings before Courts of both Instances has been established pursuant to §2(1), §6 point 7 and §13(1) point 2 of the Regulation of the Minister of Justice of 28 September 2002 on fees for services of legal counsels and on incurring by the State Treasury the costs of unpaid legal assistance provided by state-appointed legal counsels (*Dziennik Ustaw* No. 163, item 1348). The case at issue is not a typical one, but the parties have been previously engaged in a similar dispute in which the plaintiff was represented by the same legal counsel. Therefore, there were no grounds for ruling on a rate exceeding the minimum rate.

/-/ M. Gulczyńska /-/ B. Wysocki /-/ A. Adamczuk