



Under Connecticut law, health insurance policies delivered to anyone in the state must contain such a clause. See Conn. Gen. Stat. § 38a-483(a)(2). Furthermore, such clauses are strictly enforced. See Minnesota Mutual Life Ins. Co. v. Ricciardello, No. 3:96CV2387, 1997 WL 631027 \*2 (D. Conn. Sept. 17, 1997). Incontestability clauses "are enforced with particularity by the courts because of the desirable purpose which they have." 1A John A. Appleman & Jean Appleman, Insurance Law & Practice 311 (1981). The plaintiff's insurance policy was issued on October 28, 1994. See Plaintiff's Memorandum of Law and Points of Authority in Support of Motion for Partial Summary Judgment ("Plaintiff's Memorandum") (Doc. No. 74), at 12. The plaintiff sought and was denied benefits under the policy in 2001, well beyond the two-year limitation period. (See Plaintiff's Memorandum, at 3).

Thus, even assuming *arguendo* that the plaintiff failed to disclose information concerning treatment he had received, the incontestability clause bars the defendant's assertion of the Second and Third Affirmative Defenses. Moreover, even assuming *arguendo* that the plaintiff materially misrepresented a preexisting condition and the other requirements in Part 4 of the policy are satisfied, the incontestability clause also bars the defendant's assertion of the Second and Third Affirmative

Defenses.<sup>1</sup>

Therefore, the plaintiff is entitled to summary judgment as to the defendant's Second and Third Affirmative Defenses.

It is so ordered.

Dated this 30th day of August 2006, at Hartford,  
Connecticut.

\_\_\_\_\_  
/s/AWT  
Alvin W. Thompson  
United States District Judge

---

<sup>1</sup>The defendant points to Minnesota Mutual, 1997 WL 631027 at \*3-\*4, where a claim under the Connecticut Health Insurance Fraud Act, Conn. Gen. Stat. § 53-442, survived a motion to dismiss despite an incontestability clause. (See Defendant's Opposition, at 13). However, the defendant did not plead an affirmative defense pursuant to this statute.