

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - October 3, 2006

ROBERT W. SCHMIDT, J.P.
THOMAS A. ADAMS
PETER B. SKELOS
JOSEPH COVELLO, JJ.

2005-11120

DECISION & ORDER

Hospital for Joint Diseases, etc., plaintiff, New York
and Presbyterian Hospital, etc., respondent, v Travelers
Property Casualty Insurance Company, et al., appellants.

(Index No. 17459/04)

McDonnell & Adels, P.C., Garden City, N.Y. (Martha S. Henley of counsel), for
appellants.

Joseph Henig, P.C., Bellmore, N.Y., for respondent.

In an action to recover no-fault medical payments, the defendants appeal from an order of the Supreme Court, Nassau County (Joseph, J.), dated October 31, 2005, which granted the motion of the plaintiff New York and Presbyterian Hospital for summary judgment on the third cause of action and denied the defendants' cross motion for summary judgment dismissing that cause of action.

ORDERED that the order is affirmed, with costs.

In support of its motion for summary judgment on the third cause of action, the plaintiff New York and Presbyterian Hospital, as assignee of William Browne, made a prima facie showing of entitlement to judgment as a matter of law by submitting a hospital bill with a signed certified mail return receipt and by submitting the affidavit of its third-party biller, who attested that he billed the defendants for the subject medical treatment and that the defendants failed to pay the claim or issue a denial of claim form (*see New York & Presby. Hosp. v Allstate Ins. Co.*, 30 AD3d

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492, 493). In opposition to the motion the defendants failed to raise a triable issue of fact, and in support of their cross motion for summary judgment dismissing the third cause of action the defendants failed to demonstrate their prima facie entitlement to judgment as a matter of law. The defendants' failure to timely object to the adequacy of the claim forms or seek verification of the assignment constituted a waiver of any defenses based thereon (*see Nyack Hosp. v Encompass Ins. Co.*, 23 AD3d 535, *lv denied* 7 NY3d 741; *Hospital for Joint Diseases v Allstate Ins. Co.*, 21 AD3d 348; *Nyack Hosp. v Metropolitan Prop. & Cas. Ins. Co.*, 16 AD3d 564; *New York Hosp. Med. Ctr. of Queens v AIU Ins. Co.*, 8 AD3d 456).

Accordingly, the Supreme Court properly granted the motion and denied the cross motion.

SCHMIDT, J.P., ADAMS, SKELOS and COVELLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court