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

D15249
C/gts

_____AD3d_____ Submitted - April 12, 2007

REINALDO E. RIVERA, J.P.
ANITA R. FLORIO
MARK C. DILLON
EDWARD D. CARNI, JJ.

2006-06379 DECISION & ORDER

Westchester Medical Center, a/a/o Demetrio Recinos, etc., respondent, v Safeco Insurance Company of America, appellant.

(Index No. 17792/05)

Bruno, Gerbino & Soriano, LLP, Melville, N.Y. (Charles W. Benton of counsel), for appellant.

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

In an action to recover no-fault insurance benefits under certain contracts of insurance, the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Jaeger, J.), entered May 17, 2006, as granted that branch of the plaintiff's cross motion which was for summary judgment on the first cause of action.

ORDERED that the order is affirmed insofar as appealed from, with costs.

In support of that branch of its cross motion which was for summary judgment on the first cause of action, the plaintiff, Westchester Medical Center, a/a/o Demetrio Recinos (hereinafter WMC), demonstrated its prima facie entitlement to judgment as a matter of law by submitting, inter alia, the requisite billing forms, a certified mail receipt, a signed return receipt card which referenced Recinos and the forms, and an affidavit of its biller stating that the defendant failed either to pay or to deny the claim (*see New York & Presbyt. Hosp. v Travelers Prop. Cas. Ins. Co.*, ___ AD3d ___ [2d Dept, Feb. 20, 2007]; *Hospital for Joint Diseases v Travelers Prop. Cas. Ins. Co.*, 34 AD3d 532,

lv granted ___ NY3d ___ [Mar. 22, 2007]; *New York & Presbyt. Hosp. v Allstate Ins. Co.*, 30 AD3d 492). This evidence demonstrated that the defendant received the no-fault billing and failed to respond within the requisite 30-day period (*see* Insurance Law § 5106[a]; 11 NYCRR 65-3.5; *New York & Presbyt. Hosp. v Travelers Prop. Cas. Ins. Co.*, *supra*). In opposition, the defendant failed to raise a triable issue of fact. There is no evidence that it timely objected to the completeness of the claim forms, or sought verification of Recinos's assignment. Therefore, the defendant waived any defenses based thereon, including the plaintiff's purported lack of standing to maintain the first cause of action (*see Hospital for Joint Diseases v Travelers Prop. Cas. Ins. Co., supra*; *Nyack Hosp. v Encompass Ins. Co.*, 23 AD3d 535; *Hospital for Joint Diseases v Allstate Ins. Co.*, 21 AD3d 348). Accordingly, the Supreme Court correctly granted that branch of the plaintiff's cross motion which was for summary judgment on the first cause of action.

The defendant's remaining contentions either are improperly raised for the first time in this court or are without merit.

RIVERA, J.P., FLORIO, DILLON and CARNI, JJ., concur.

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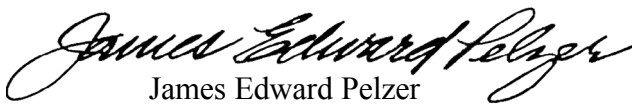

James Edward Pelzer
Clerk of the Court