

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

D20657  
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Argued - September 18, 2008

A. GAIL PRUDENTI, P.J.  
FRED T. SANTUCCI  
WILLIAM E. McCARTHY  
CHERYL E. CHAMBERS, JJ.

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2007-08056

DECISION & ORDER

Art of Healing Medicine, P.C., et al., appellants,  
v Travelers Home and Marine Insurance Company,  
a/k/a Travelers Property Casualty Corporation,  
respondents.

(Index No. 65824/04)

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Amos Weinberg, Great Neck, N.Y., for appellants.

John P. Humphreys, Melville, N.Y. (David R. Holland and Dominic P. Zafonte of  
counsel), for respondents.

In an action to recover assigned first-party no-fault benefits under an insurance contract, the plaintiffs appeal, by permission, from an order of the Appellate Term of the Supreme Court for the Second and Eleventh Judicial Districts, dated June 4, 2007, which affirmed an order of the Civil Court of the City of New York, Kings County (Nadelson, J.), entered April 5, 2005, denying their motion for partial summary judgment.

ORDERED that the order dated June 4, 2007, is affirmed, with costs.

The plaintiffs failed to establish their prima facie entitlement to judgment as a matter of law. The plaintiffs' medical service providers failed to demonstrate the admissibility of their billing records under the business records exception to the hearsay rule (*see* CPLR 4518[a]; *Matter of Leon RR*, 48 NY2d 117, 122-123; *Hochhauser v Electric Ins. Co.*, 46 AD3d 174, 179-180; *Kane v Triborough Bridge & Tunnel Auth.*, 8 AD3d 239, 241; *Rosenthal v Allstate Ins. Co.*, 248 AD2d 455,

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COMPANY, a/k/a TRAVELERS PROPERTY CASUALTY CORPORATION

456-457). Thus, the plaintiffs' motion was properly denied, regardless of the sufficiency of the opposing papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851).

To the extent that the plaintiffs raise any issue with respect to the defendant's cross motion for summary judgment dismissing the complaint, that issue is not properly before us, as the cross motion remains pending and undecided (*see Katz v Katz*, 68 AD2d 536, 542-543).

PRUDENTI, P.J., SANTUCCI, McCARTHY and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court