

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

D25936  
H/cb

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Argued - November 17, 2009

REINALDO E. RIVERA, J.P.  
MARK C. DILLON  
HOWARD MILLER  
SHERI S. ROMAN, JJ.

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2009-01451

DECISION & ORDER

St. Vincent's Hospital & Medical Center, as assignee  
of Jane Fritz, respondent, v Allstate Insurance  
Company, appellant.

(Index No. 009888/08)

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McDonnell & Adels, PLLC, Garden City, N.Y. (Martha S. Henley of counsel), for  
appellant.

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

In an action to recover no-fault medical benefits under an insurance contract, the defendant appeals from an order and judgment (one paper) of the Supreme Court, Nassau County (Feinman, J.), entered January 14, 2009, which, upon a decision of the same court dated December 3, 2008, granted the plaintiff's motion for summary judgment on the complaint, in effect, denied the defendant's cross motion for summary judgment dismissing the complaint, and is in favor of the plaintiff and against it in the principal sum of \$32,086.70.

ORDERED that the order and judgment is reversed, on the law, with costs, the motion is denied, the cross motion is granted, and the complaint is dismissed.

In support of its cross motion, the defendant made a prima facie showing of entitlement to judgment as a matter of law by demonstrating that the accident in which the plaintiff's assignor was injured was not an insured incident (*see Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 199; *see generally Alvarez v Prospect Hosp.*, 68 NY2d 320). In opposition to

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the defendant's prima facie showing, the plaintiff failed to raise a triable issue of fact. Contrary to the plaintiff's contention, the defense of lack of coverage is not precluded by the defendant's failure to pay or deny the subject no-fault claim within the requisite 30-day period (*see Hospital for Joint Diseases v Travelers Prop. Cas. Ins. Co.*, 9 NY3d 312, 318; *Central Gen. Hosp. v Chubb Group of Ins. Co.*, 90 NY2d at 199).

Accordingly, the Supreme Court should have denied the plaintiff's motion for summary judgment on the complaint, and granted the defendant's cross motion for summary judgment dismissing the complaint.

The plaintiff's remaining contentions are without merit.

RIVERA, J.P., DILLON, MILLER and ROMAN, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court