

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

D32899
G/prt

_____AD3d_____

Argued - October 28, 2011

WILLIAM F. MASTRO, J.P.
CHERYL E. CHAMBERS
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2011-05272

DECISION & ORDER

Lenox Hill Hospital, as assignee of Hector Jamie Robles, appellant, et al., plaintiff, v Government Employees Insurance Company, respondent.

(Index No. 19772/10)

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

Teresa M. Spina, Woodbury, N.Y. (Jeanne M. Ortega and P. Stephanie Estevez of counsel), for respondent.

In an action to recover payment of no fault benefits under a policy of automobile insurance, the plaintiff Lenox Hill Hospital, as assignee of Hector Jamie Robles, appeals from an order of the Supreme Court, Nassau County (Mahon, J.), entered April 21, 2011, which denied its motion for summary judgment on the first cause of action.

ORDERED that the order is affirmed, with costs.

Given the limited nature of the plaintiff's motion for summary judgment, which established the plaintiff's prima facie entitlement to judgment as a matter of law solely on the ground that the defendant did not pay or deny the subject claim within 30 days (*see* 11 NYCRR 65-3.8[c]), the defendant's only burden in opposition to the motion was to raise a triable issue of fact regarding its timely payment or denial of the claim (*see e.g. Westchester Med. Ctr. v Clarendon Natl. Ins. Co.*, 57 AD3d 659, 659-660; *see generally Stukas v Streiter*, 83 AD3d 18, 24). The defendant succeeded in raising such an issue of fact by submitting evidence that it sent the plaintiff a denial of claim form

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within the 30-day time limit. Accordingly, the motion was properly denied without regard to the plaintiff's additional contention, improperly raised for the first time in its reply papers on the motion (see *Djoganopoulos v Polkes*, 67 AD3d 726, 727; *Crummell v Avis Rent A Car Sys., Inc.*, 62 AD3d 825, 826), that the medical reports upon which the defendant relied to establish the merits of its denial of the claim were not in proper evidentiary form.

MASTRO, J.P., CHAMBERS, SGROI and MILLER, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court