

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

D33145  
W/kmb

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 11, 2011

A. GAIL PRUDENTI, P.J.  
PETER B. SKELOS  
RUTH C. BALKIN  
SANDRA L. SGROI, JJ.

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2010-07301

DECISION & ORDER

Westchester Medical Center, as assignee of Gregoria Young, etc., respondent, v Progressive Casualty Insurance Company, appellant.

(Index No. 18516/08)

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Carman, Callahan & Ingham, LLP, Farmingdale, N.Y. (Joseph A. Niemczyk of counsel), for appellant.

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

In an action to recover no-fault medical payments under certain policies of automobile insurance, the defendant appeals, as limited by its brief, from so much of an order of the Supreme Court, Nassau County (Brandveen, J.), entered May 19, 2010, as, upon reargument, vacated the determination in an order of the same court dated August 19, 2009, denying the plaintiff's motion for summary judgment on the complaint, and thereupon granted the plaintiff's motion for summary judgment on the complaint.

ORDERED that the order entered May 19, 2010, is modified, on the law, by deleting the provisions thereof, upon reargument, vacating the determination in the order dated August 19, 2009, denying those branches of the plaintiff's motion which were for summary judgment on the first and third causes of action, and thereupon granting those branches of the motion, and substituting therefor a provision, upon reargument, adhering to the determination in the order dated August 19, 2009, denying those branches of the motion; as so modified, the order entered May 19, 2010, is affirmed insofar as appealed from, without costs or disbursements.

In an action to recover no-fault benefits, a plaintiff makes a prima facie showing of entitlement to judgment as a matter of law by submitting evidentiary proof that the prescribed

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statutory billing forms were mailed to and received by the relevant insurance carrier, and that payment of no-fault benefits was overdue (*see Presbyterian Hosp. in City of N.Y. v Maryland Cas. Co.*, 90 NY2d 274; *New York & Presbyt. Hosp. v Selective Ins. Co. of Am.*, 43 AD3d 1019). No-fault benefits are overdue if not paid within 30 days after the insurer receives proof of claims, including verification of all relevant information requested (*see* 11 NYCRR 65-3.5, 65-3.8[a]; *New York & Presbyt. Hosp. v Selective Ins. Co. of Am.*, 43 AD3d 1019).

With respect to the first cause of action, in which the plaintiff sought benefits as assignee of Gregoria Young, the plaintiff made a prima facie showing that it had mailed the prescribed statutory billing form to the defendant, and did not receive payment within the requisite 30-day period. In opposition to that showing, however, the defendant insurer submitted proof that it timely issued a denial of this claim. Inasmuch as the plaintiff sought summary judgment only on the basis that the defendant failed to timely pay or deny the claim, the Supreme Court, upon reargument, should have adhered to its prior determination denying summary judgment to the plaintiff on this cause of action without regard to the merits of the defendant's denial of the claim (*see Lenox Hill Hosp. v Government Employees Ins. Co.*, \_\_\_\_\_AD3d\_\_\_\_\_, 2011 NY Slip Op 08330 [2d Dept 2011]; *Westchester Med. Ctr. v Clarendon Natl. Ins. Co.*, 57 AD3d 659, 659-660; *see generally Stukas v Streiter*, 83 AD3d 18, 24).

With respect to the second cause of action, in which the plaintiff sought benefits as assignee of Loicyra Bulado, also known as Loicyra Almeda, the plaintiff offered proof that it had mailed the prescribed statutory billing form and did not receive payment therefor within 30 days after complying with the defendant's verification requests (*see Presbyterian Hosp. in City of N.Y. v Maryland Cas. Co.*, 90 NY2d 274). In opposition thereto, the defendant failed to raise a triable issue of fact. Accordingly, upon reargument, the plaintiff was properly awarded summary judgment on the second cause of action (*see generally Alvarez v Prospect Hosp.*, 68 NY2d 320).

With respect to the third cause of action, in which the plaintiff sought benefits as assignee of Anthony Prunella, the plaintiff submitted proof that it did not receive payment of its claim within 30 days after submission thereof to the defendant. However, in opposition thereto, the defendant established that it timely requested verification of this claim, and that it paid the claim within 30 days after receipt of the requested verification (*see* 11 NYCRR 65-3.5[b]; *see also New York & Presbyt. Hosp. v Selective Ins. Co. of Am.*, 43 AD3d 1019; *Mount Sinai Hosp. v Chubb Group of Ins. Cos.*, 43 AD3d 889). Accordingly, upon reargument, the Supreme Court should have adhered to its prior determination denying that branch of the plaintiff's motion which was for summary judgment on the third cause of action.

PRUDENTI, P.J., SKELOS, BALKIN and SGROI, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court