

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

D34562
G/kmb

_____AD3d_____

Argued - March 13, 2012

PETER B. SKELOS, J.P.
MARK C. DILLON
RANDALL T. ENG
LEONARD B. AUSTIN, JJ.

2011-09248

DECISION & ORDER

Westchester Medical Center, as assignee of
Peter Dilemme, appellant, v Lancer Insurance
Company, respondent.

(Index No. 22625/10)

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

Bruno, Gerbino & Soriano, LLP, Melville, N.Y. (Mitchell L. Kaufman of counsel),
for respondent.

In an action to recover no-fault medical payments under a policy of automobile insurance, the plaintiff appeals from so much of an order of the Supreme Court, Nassau County (Marber, J.), entered September 12, 2011, as denied its motion for summary judgment on the complaint.

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

The plaintiff demonstrated its prima facie entitlement to judgment as a matter of law on its complaint to recover no-fault payments, by submitting evidence that the prescribed statutory billing form had been mailed and received by the defendant insurer, which failed to either pay or deny the claim within the requisite 30-day period (*see* Insurance Law § 5106[a]; 11 NYCRR 65-3.5; *NYU-Hosp. for Joint Diseases v American Intl. Group, Inc.*, 89 AD3d 702; *Mount Sinai Hosp. v Country Wide Ins. Co.*, 85 AD3d 1136; *Mount Sinai Hosp. v Government Empls. Ins. Co.*, 85 AD3d 1135; *New York & Presbyt. Hosp. v Selective Ins. Co. of Am.*, 43 AD3d 1019). In opposition to the motion, however, the defendant established that it had made a timely request for additional

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verification and that it timely denied the claim within 30 days of receipt of the requested information (see 11 NYCRR 65-3.8[a][1]; 65-3.5[b], 65-3.6[b]; *Westchester Med. Ctr. v American Tr. Ins. Co.*, 60 AD3d 848, 849; *New York Univ. Hosp. Rusk Inst. v Government Empls. Ins. Co.*, 39 AD3d 832; *New York & Presbyt. Hosp. v Allstate Ins. Co.*, 31 AD3d 512, 513; see generally *Hospital for Joint Diseases v Travelers Prop. Cas. Ins. Co.*, 9 NY3d 312, 317).

The parties' remaining contentions are without merit.

Accordingly, the Supreme Court properly denied the plaintiff's motion for summary judgment on the complaint.

SKELOS, J.P., DILLON, ENG and AUSTIN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court