

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

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Argued - April 19, 2012

REINALDO E. RIVERA, J.P.  
ARIEL E. BELEN  
SANDRA L. SGROI  
ROBERT J. MILLER, JJ.

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2011-09245

DECISION & ORDER

Westchester Medical Center, as assignee of Shaheen Akhtar, appellant, v Hereford Insurance Company, respondent.

(Index No. 514/11)

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

Lawrence R. Miles, Long Island City, N.Y., for respondent.

In an action to recover no-fault benefits under an insurance contract, the plaintiff appeals, as limited by its notice of appeal and brief, from so much of an order of the Supreme Court, Nassau County (Sher, J.), entered September 1, 2011, as denied its motion for summary judgment on the complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and the plaintiff's motion for summary judgment on the complaint is granted.

The plaintiff made a prima facie showing of entitlement to judgment as a matter of law by submitting evidence that the prescribed statutory billing form had been mailed to 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 65-3.8[c]; *NYU-Hosp. for Joint Diseases v American Intl. Group, Inc.*, 89 AD3d 702, 703; *Mount Sinai Hosp. v Country Wide Ins. Co.*, 85 AD3d 1136, 1137; *Westchester Med. Ctr. v Lincoln Gen. Ins. Co.*, 60 AD3d 1045, 1045-1046).

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In opposition to the plaintiff's motion, the defendant failed to raise a triable issue of fact. A presumption of receipt was created by the certified mail receipt and the signed return receipt card, such that the defendant's mere denial of receipt was insufficient to raise a triable issue of fact (see *New York & Presbyt. Hosp. v Countrywide Ins. Co.*, 44 AD3d 729, 730-731; *Westchester Med. Ctr. v Liberty Mut. Ins. Co.*, 40 AD3d 981, 982-983). Further, the defendant's failure to respond to the no-fault billing within the requisite 30-day period precluded it from raising the defenses that it was not provided with timely notice of the underlying motor vehicle accident or proof of claim (see *Bayside Rehab & Physical Therapy P.C. v GEICO Ins. Co.*, 24 Misc 3d 542, 545; *Rockman v Clarendon Natl. Ins. Co.*, 21 Misc 3d 1118[A], 2008 NY Slip Op 52093[U] [Civ Ct Richmond County 2008]; *Vincent Med. Servs., P.C. v New York Cent. Mut. Fire Ins. Co.*, 21 Misc 3d 142[A], 2008 NY Slip Op 52442[U] [App Tm 2d Dept 2008]). Finally, although 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. Cos.*, 90 NY2d 195, 199), here, the defendant's submissions were insufficient to raise triable issues of fact with respect to a lack of coverage defense (see *Mercury Cas. Co. v Encare, Inc.*, 90 AD3d 475; *D.S. Chiropractic, P.C. v Country-Wide Ins. Co.*, 24 Misc 3d 138[A], 2009 NY Slip Op 51584[U] [App Tm 2d Dept 2009]). Accordingly, the Supreme Court should have granted the plaintiff's motion for summary judgment on the complaint.

RIVERA, J.P., BELEN, SGROI and MILLER, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court