

Westchester Med. Ctr. v American Tr. Ins. Co.

2007 NY Slip Op 34131(U)

December 12, 2007

Supreme Court, Nassau County

Docket Number: 4430-07/

Judge: Geoffrey J. O'Connell

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. GEOFFREY J. O'CONNELL

Justice

TRIAL/IAS, PART 4
NASSAU COUNTY

WESTCHESTER MEDICAL CENTER, a/a/o
MANUEL CASTILLO; NEW YORK METHODIST
HOSPITAL, a/a/o SYDNEY KOLZE; MOUNT
SINAI HOSPITAL, a/a/o WILLIAM FLANAGAN;
ST. JOHN'S HOSPITAL CATHOLIC MEDICAL
CENTER, a/a/o VICTOR DE LA CRUZ,

Plaintiff(s),

INDEX No. 14430/07

-against-

MOTION DATE: 11/2/07

AMERICAN TRANSIT INSURANCE COMPANY,

Defendant(s).

MOTION SEQ. No. 1-MOD
XXX

- The following papers read on this motion:
- Notice of Motion/Affirmation/Exhibits
 - Affirmation in Opposition/Exhibits
 - Reply

Plaintiff seeks an Order granting it summary judgment on the four causes of action set forth in the Complaint. Defendant opposes.

In this action plaintiff hospital seeks to recover no-fault benefits for services and treatment rendered to individuals alleged to be insured by the defendant, pursuant to Insurance Law § 5106(a) and 11 NYCRR 65-3.8(a)(1).

In the first cause of action plaintiff hospital seeks summary judgment to collect sums for hospital services performed for the benefit of MANUEL CASTILLO between February 5, 2007 through February 7, 2007 for injuries allegedly sustained due to an automobile collision on February 5, 2007.

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The plaintiff offers proof that it billed the defendant with Hospital Facility Form, N-F5 and a UB-92 on March 13, 2007, which it has proof was delivered and signed for via Certified Mail, on March 20, 2007, for the sum of \$3,534.85 for payment for services rendered for the benefit of CASTILLO. It claims that the defendant failed to either pay or issue a Denial of Claim Form in a timely fashion.

Plaintiff claims that on April 5, 2007 the defendant issued a defective Denial of Claim, stating that CASTILLO was eligible for workers comp as the injury occurred in the course of his employment.

Plaintiff claims that this denial is clearly untimely, and it is due the sums sought. The plaintiff also argues that the Denial was not sent in the manner authorized by the Statute and is therefore clearly defective.

Defendant claims summary judgment is not appropriate as there is evidence that the Denial of April 5, 2007 was timely as sent within the March 20, 2007 receipt of the plaintiff's claim. It also argues that the denial is proper as there is evidence that the patient was eligible for workers compensation .

As noted by the plaintiff, the defendant has not provided or offered a workers' compensation policy that covers the assignor for the accident, and the evidence that he is covered by such is based on hearsay reports and speculation. (Opposition, Affidavit McLeish)

Defendant provides an affidavit from its litigation representative who states that he believes that the Denial of Claim was mailed to the plaintiff within the proper 30 days, relying on his knowledge generally, that such a denial is prepared and mailed in accordance with PROGRESSIVE's normal business practices. Defendant provides copies of the request allegedly sent. There is no affidavit of service by any person with first hand knowledge of the facts who states that they personally mailed the Denial in question. Further, there is no certified mail receipt for the Denial. Defendant argues that this proof, based on a standard office practice, is acceptable. *A.M. Med. Servs. P.C. v. New York Cent. Mut. Ins.*, 2006 NY Slip Op 516662(u) (App.Term. 2nd Dept).

As noted by plaintiff, the facts set forth in the affidavit provided do not set forth a basis to accept these affidavits as evidence of their being kept as business records. In addition, as further noted by the plaintiff the Denial allegedly sent is deficient in failing to "fully and explicitly" state why the entire claim was not being paid. *General Accid. Ins. Group v. Cirucci*, 46 NY2d 862 (1979).

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In the second cause of action plaintiff hospital seeks summary judgment to collect sums for hospital services performed for the benefit of SYDNEY KOLZE between May 6, 2006 through May 8, 2006 for injuries allegedly sustained due to an automobile collision on May 6, 2006.

The plaintiff offers proof that it billed the defendant with Hospital Facility Form, N-F5 and a UB-92 on June 12, 2006, signed for as received by Certified Mail on June 15, 2006, for the sum of \$5,125.06 for payment for services rendered for the benefit of KOLZE. It claims that the defendant failed to either pay or issue a Denial of Claim Form in a timely fashion.

Defendant claims summary judgment is not appropriate contending that with respect to the second cause of action claiming that it sent the plaintiff a Denial of Claim Form in a timely fashion requesting medical records and an assignment of benefits.

Defendant again provides an affidavit from its claims examiner who states that he believes that the Denial of Claim was mailed to the plaintiff within the proper 30 days, relying on his knowledge generally, that such a denial is prepared and mailed in accordance with PROGRESSIVE's normal business practices. Defendant provides copies of the request allegedly sent. There is no affidavit of service by any person with first hand knowledge of the facts who states that they personally mailed the Denial in question. Further, there is no certified mail receipt for the Denial. Defendant argues that this proof, based on a standard office practice, is acceptable. *A.M. Med. Servs. P.C. v. New York Cent. Mut. Ins.*, 2006 NY Slip Op 516662(u) (App.Term. 2nd Dept).

Plaintiff claims that it fully complied with the defendant's verification requests, providing proof of mailing, and a certified mail receipt from the defendant, demonstrating that it received medical records on July 9, 2007. Further, counsel for the plaintiff affirms that he faxed the assignment to the defendant on October 22, 2007.

The Court agrees with the defendant, that based on the proof presented, the plaintiff's motion for summary judgment on the second cause of action is Denied, as the plaintiff has failed to demonstrate that the payments sought are overdue and owing in accordance with the Statute.

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In the third cause of action plaintiff hospital seeks summary judgment to collect sums for hospital services performed for the benefit of William Flanagan between April 5, 2006 through April 7, 2006 for injuries allegedly sustained due to an automobile collision on March 30, 2006.

The plaintiff offers proof that it billed the defendant with Hospital Facility Form, N-F5 and a UB-92 on April 19, 2006, which was received, via certified mail on April 24, 2006 for the sum of \$17,944.92 for payment for services rendered for the benefit of Flanagan. It claims that the defendant failed to either pay or issue a Denial of Claim Form in a timely fashion.

Again, the defendant claims that on April 28, 2006 it sought a copy of the assignment of benefits which was not provided. (Opposition, Aff. Iris Hernandez, Exh 10, 11) The defendant claims that its denial or payment is therefore not yet due.

Plaintiff offers proof that this assignment was provided with the N-F5 on April 19, 2006, and provides an affidavit from the employee who affirms that he mailed it to the defendant. (Reply, Exh. 3).

Defendant claims summary judgment is not appropriate contending that with respect to the third cause of action claiming that it sent the plaintiff the request for the assignment in a timely fashion. Defendant provides an affidavit from its claims examiner who states that she believes that the Denial of Claim was mailed to the plaintiff within the proper 30 days, relying on her review of records and knowledge generally, that such a denial is prepared and mailed in accordance with the defendant's normal business practices. Defendant provides copies of the request allegedly sent. There is no affidavit of service by any person with first hand knowledge of the facts who states that they personally mailed the Denial in question. Further, there is no certified mail receipt for the Denial. Defendant argues that this proof, based on a standard office practice, is acceptable. *A.M. Med. Servs. P.C. v. New York Cent. Mut. Ins.*, 2006 NY Slip Op 516662(u) (App.Term. 2nd Dept).

As noted by plaintiff, the facts set forth in the affidavit provided do not set forth a basis to accept these affidavits as evidence of their being kept as business records.

Plaintiff's motion for summary judgment on the third cause of action is Granted. Plaintiff offers proof that it billed the defendant with Hospital Facility Form, Form N-F 5, and a UB-92, for payment in a timely

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fashion. There is no proper evidence that the bill was denied or not paid in accordance with the regulation requirements.

Plaintiff is awarded summary judgment on this claim as it has offered uncontested proof that the defendant failed to pay the hospital or to issue a Denial of Claim Form within the proper time. The records relied upon by the defendant in opposing this application are insufficient. Insurance Law § 5106(a); 11 NYCRR 65.

In the fourth cause of action plaintiff hospital seeks summary judgment to collect sums for hospital services performed for the benefit of VICTOR DE LA CRUZ on November 22 4, 2006 for injuries allegedly sustained due to an automobile collision on November 21, 2006.

The plaintiff offers proof that it billed the defendant with Hospital Facility Form, N-F5 and a UB-92 on February 9, 2007, and received and signed for by the defendant, via certified mail on February 13, 2007 for the sum of \$761.91 for payment for services rendered for the benefit of DE LA CRUZ. It claims that the defendant failed to either pay or issue a Denial of Claim Form in a timely fashion.

Defendant claims that it timely Denied the bill as untimely, on March 7, 2007. (Opposition, Anthony Gooden Affid; Exh. 12).

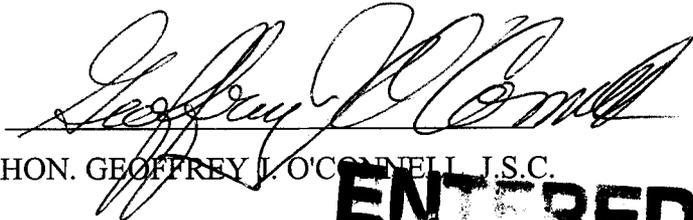
The plaintiff does not address whether its request was timely but merely argues that it has no record of receiving the Denial of Claim Form. Based on the uncontested proof that the Request for payment was untimely, the plaintiff's motion for summary judgment on the fourth cause of action is Denied.

Based on the proof presented, that portion of the plaintiff's motion seeking summary judgment on the first and third causes of action, is Granted. The second and fourth cases of action are dismissed.

It is, SO ORDERED.

Dated:

Dec 12, 2007


HON. GEOFFREY J. O'CONNELL, J.S.C.

ENTERED

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**NASSAU COUNTY
COUNTY CLERK'S OFFICE**