

**Kingsbrook Jewish Medical Center v Allstate
Insurance Company**

2007 NY Slip Op 34402(U)

November 15, 2007

Supreme Court, Nassau County

Docket Number: 3644/07

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

KINGSBROOK JEWISH MEDICAL CENTER, a/a/o
THRESIAMM VALIYAPARAMBIL; WHITE
PLAINS HOSPITAL CENTER, a/a/o LUIS AMON,
GEORGE HAFFORD,

Plaintiff(s),

INDEX No. 3644/07

-against-

MOTION DATE: 9/19/07

ALLSTATE INSURANCE COMPANY,

Defendant(s).

MOTION SEQ. No. 1

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The following papers read on this motion:

- Notice of Motion/Affirmation/Affidavit/Exhibits
- Notice of Cross Motion/Affirmation/Affidavits/Exhibits
- Memorandum of Law
- Reply
- Reply Memorandum ov Law

Plaintiff seeks an order granting it summary judgment on its second and third causes of action. The first cause of action was withdrawn. Defendant opposes and seeks summary judgment dismissing the Complaint.

In the second cause of action plaintiff Medical Center seeks payment for services rendered to its assignee, Luis Amon, between July 22, 2005 through July 23, 2005, for injuries allegedly sustained due to an auto accident on July 22, 2005. It seeks \$3,638.84.

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Plaintiff offers proof that it mailed the proper forms seeking No-Fault compensation for these services to the defendant on May 23, 2006. Plaintiff alleges that the defendant failed to pay the entire bill or issue a Denial of Claim form within the required 30 days. On October 3, 2006 defendant made a payment of \$3,456.36. Plaintiff seeks the balance of \$182.48 with interest and attorneys fees.

Counsel for defendant claims that the plaintiff was paid within the proper time, as there was an outstanding request for verification sent to the plaintiff. In support it provides a photocopy of a request dated July 11, 2006. There is no signature on this document, nor is there an affidavit by the employee whose name appears on the request attesting that she actually sent it to the plaintiff.

Plaintiff provides a copy of the UB-92, a copy of proof that the certified mailing was sent and received, and an affidavit from a person with first hand knowledge of the facts who attests that she personally sent the form.

In denying the application the insurance company offers an unsigned request for the form. There is no proof of when, if ever this request was sent to the plaintiff. There is no affidavit from the Processor, whose name is typed on the form, provided to state that she reviewed the mail sent from the hospital and found no UB-92 within.

As to the third cause of action plaintiff Medical Center seeks payment for services rendered to its assignee, George Hafford, between July 3, 2006 through August 22, 2006, for injuries allegedly sustained due to an auto accident on July 3, 2006. It seeks \$26,979.83

Plaintiff offers proof that it mailed the proper forms seeking No-Fault compensation for these services to the defendant, and proof it was signed for on November 8, 2006. Plaintiff alleges that the defendant failed to pay the entire bill or issue a Denial of Claim form within the required 30 days.

Counsel for defendant claims that the defendant did not pay, as many of the injuries do not appear related to the underlying accident, including treatment from an infection. It claims that it was therefore not required to comply with the statute.

The Court notes that the only arguments are made by counsel. There is no medical affidavit attesting that the infection and complications suffered by the assignee, and subsequent treatment are not at all related to the underlying accident.

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The attorneys interpretation and conclusions as to medical causation are wholly insufficient.

Plaintiff provides a copy of the UB-92, a copy of proof that the certified mailing was sent and received, and an affidavit from a person with first hand knowledge of the facts who attests that she personally sent the form. It is conceded that the defendant did not pay, request additional verification or issue a Denial of Claim form in a timely fashion.

State Farm opposes plaintiff's motion for summary judgment and seeks summary judgment dismissing the Complaint. As to the second cause of action counsel for the insurer provides a photocopy of what is purported to be the affidavit of a Claims Support Supervisor who states the general procedures used with mailing out Denial of Benefits clauses. She 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 State Farm's normal business practices. In addition, counsel provides several unsigned undated letters, as noted above, which she claims were sent to the plaintiff and the assignees. There is no proof of actual mailing of any of these documents.

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).

These documents are wholly insufficient to support counsel's motion for summary judgment.

Plaintiff's motion for summary judgment on the second and third causes of action are 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 fashion. There is no proper evidence that the bill was denied or not paid in accordance with the regulation requirements.

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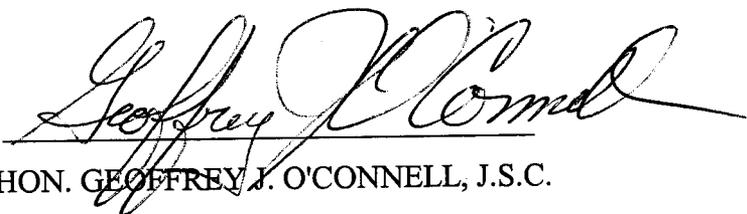
Based on the proof presented, plaintiff is awarded summary judgment on this claim as it has offered uncontested proof that the defendant failed to pay the hospital or to issue a Denial of Claim Form within the proper time. The records relied upon by the defendant in opposing this application are insufficient.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

The defendant's motion is Denied.

It is, SO ORDERED.

Dated:

Nov. 15, 2007


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

ENTERED

NOV 21 2007

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**