

**New York Hosp. Med. Ctr. of Queens v
Countrywide Ins. Co.**

2008 NY Slip Op 31736(U)

June 16, 2008

Supreme Court, Nassau County

Docket Number: 3903-08/

Judge: Arthur M. Diamond

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SUPREME COURT - STATE OF NEW YORK

Present:

HON. ARTHUR M. DIAMOND
Justice Supreme Court

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THE NEW YORK HOSPITAL MEDICAL CENTER
OF QUEENS, a/a/o WILLIAM GUERRADIAZ,
THE NEW YORK AND PRESBYTERIAN
HOSPIATL, a/a/o SHELDON FORMAN

Plaintiff,

-against-

COUNTRYWIDE INSURANCE COMPANY
Defendant.

TRIAL PART: 21

NASSAU COUNTY

INDEX NO: 003903/08

MOTION SEQ. NO: 1,2

SUBMIT DATE: 5/27/08

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The following papers having been read on this motion:

- Notice of Motion..... 1
- Cross-Motion 2
- Opposition and Reply3

Motion (seq. No. 1) by the attorneys for the plaintiff for an order pursuant to CPLR 3212 awarding summary judgment to the plaintiffs on the first cause of action (Guerradiaz) and the second cause of action (Forman); and cross-motion (seq. No. 2) by the attorneys for the defendant for an order pursuant to CPLR 3212 granting the defendant summary judgment against the plaintiffs are determined as hereinafter set forth.

This is an action to recover no-fault benefits under an insurance contract.

New York's no-fault automobile insurance system is designed "to ensure prompt compensation for losses incurred by accident victims without regard to fault or negligence, to reduce the burden on the courts and to provide substantial premium savings to New York motorists." *Matter of Med. Soc'y v Serio*, 100 NY2d 854, 860. In furtherance of these goals, the Superintendent of

Insurance has adopted regulations implementing the No-Fault Law (Insurance Law Article 51), including circumscribed time frames for claim procedures. These regulations require an accident victim to submit a notice of claim to the insurer. *See* 11 NYCRR 65-1.1, 65-2.4[b]. Next, the injured party or the assignee (typically a hospital, as in the case here) must submit proof of claim for medical treatment after services are rendered. *See* 11 NYCRR 65-1.1, 65-2.4(c). Upon receipt of one or more of the prescribed verification forms used to establish proof of claim, such as the NYS Form NF-10, an insurer has 15 business days within which to request “any additional verification required by the insurer to establish proof of claim” (11 NYCRR 65-3.5(b)). An insurance company must pay or deny the claim within 30 calendar days after receipt of the proof of claim. *See* Insurance Law § 5106[a]; 11 NYCRR 65-3.8(c). If an insurer seeks additional verification, however, the 30-day window is tolled until it receives the relevant information requested (*see* 11 NYCRR 65-3.8(a)(1); *see Hospital for Joint Diseases v Travelers Property Casualty Insurance Company*, 9 NY3d 312, 317). A timely denial alone does not avoid preclusion where said denial is factually insufficient, conclusory, vague or otherwise involves a defense which has no merit as a matter of law. *Nyack Hospital v Metropolitan Prop. & Cas. Co.*, 16 AD3d 564.

An attorney may be entitled to a fee for each claim, rather than a single fee when multiple causes of action are bundled. Once an action to recover no-fault benefits has been commenced 11 NYCRR 65-4.6(e) grants attorney’s fees of 20% of the amount of the first-party benefits awarded, plus interest, with a ceiling of \$850.00 per claim. *Smithtown Gen. Hosp. v State Farm Mut. Auto Ins. Co.*, 207 AD2d 338, *Hempstead Gen. Hosp. v Ins. Co. of N. Am.*, 208 AD2d 501.

In *LMK Psychological Services P.C. v State Farm Mut. Auto Ins. Co.*, 46 AD3d 1290, the Court stated:

Supreme Court did not err in awarded counsel fees on a per claim

basis rather than a per assignor basis. When forced to commence an action to compel the payment of a proper no-fault claim, a claimant is entitled to recover counsel fees in the sum of 20% of the amount of first-party benefits, plus interest, subject to a maximum fee of \$850 (*see* Insurance Law § 5106[a]; 11 NYCRR 65.17[b][6][v]; 65.18[f][5]). Notably, the Superintendent of Insurance issued an opinion letter on October 8, 2003 that counsel fees are calculated on a per assignor basis (*see* Ops Gen Counsel NY Ins Dept. No. 03-10-04 [Oct. 2003]; *Marigliano v New York Cent. Mut. Fire Ins. Co* 13 Misc3d 1079 [2006]). We conclude that such opinion letter is not an appropriate interpretation of the statute. Although we ordinarily give deference to the agency's interpretation of its own regulations, such deference need not be accorded where, as here, the interpretation conflicts with the explicit language of the controlling statute . . . The Superintendent's interpretation undermines the goal of the no-fault law to fully compensate a claimant for economic loss resulting from the wrongful denial of a claim and wastes judicial assets by encouraging the commencement of multiple actions in order to recover the maximum available counsel fees.

“In spite of the Superintendent's opinion letter, the well settled case law is that the statute requires payment of counsel fees on a per claim basis (citations omitted).” *See LMK Psychological Services P.C. v State Farm Mutual Automobile Insurance Company*, 46 AD3d 1290, 1292 (3rd Dept. December 27, 2007). *See also Trump Physical Therapy, P.C. v State Farm Mut. Auto Ins. Co.*, 18 Misc3d 1116A, 2008 NY Slip Op 5010U (2008).

Interest runs from the time of the commencement of an action. 11 NYCRR § 65-3.9(c); *State Farm v Pfeiffer*, 95 AD2d 806.

First Cause of Action: William Guerradiaz

Plaintiff New York Hospital Medical Center of Queens is the assignee for health services rendered to William Guerradiaz during the period August 18, 2005 through August 31, 2005 arising out of an automobile accident on August 15, 2005. The first cause of action (Guerradiaz) was part of a prior lawsuit in this Court. *New York and Presbyterian Hospitals (Lam), The New York Hospital Medical Center of Queens (Guerradiaz) v Countywide Insurance Company*, Index

No. 018609/05, Justice Robbins June 27, 2006, reversed 44 AD3d 729, 730. In reversing as to the Guerradiaz cause of action, 44 AD3d 729, 730, the Appellate Division found that plaintiff's cause of action was premature for having failed to provide the defendant with the requested verification. There is no evidence that the Guerradiaz cause of action "was subsequently withdrawn without prejudice" as stated by the attorney for the plaintiff. The prior action bearing index No. 18609/05 is marked "disposed" in the Case Management System. Subsequently, the plaintiff obtained the complete hospital records (requested verification) and mailed them to the defendant on January 10, 2008. The medical records were mailed Certified Mail Return Receipt Requested and were received by the defendant on January 14, 2008. More than 30 days elapsed from the time that the defendant received the requested verification. The defendant did not issue a Denial of Claim tolling the defendant's time to pay or issue payment. A presumption of receipt is created by the certified mail receipt and the signed return receipt card, each bearing a notation to the relevant medical records such that the defendant's denial of receipt of the verification material is insufficient to raise a triable issue of fact. *See Westchester Med Ctr. v Liberty Mutual Ins. Co.*, 40 AD3d 981, 982. As the only defense for the claim was that the carrier had not received the requested verification which has now been supplied, the plaintiff commenced the within action as to the Guerradiaz cause of action. Plaintiff is granted summary judgment on the first cause of action for the hospital bill plus statutory no-fault interest and attorneys' fees. The Nassau County Clerk is directed to enter judgment against the defendant on the first cause of action in the sum of \$2,796.15 plus statutory no-fault interest from March 10, 2008 (the commencement of the within action) and statutory attorneys' fees pursuant to 11 NYCRR 65-4.6(e).

Second Cause of Action: Sheldon Forman

The New York and Presbyterian Hospital is the assignee for health services rendered to Sheldon Forman during the period September 20, 2007 through September 26, 2007 arising out of an automobile accident on September 20, 2007. On November 12, 2007 defendant Countrywide Insurance Company received a bill in the amount of \$56,772.31 reduced by DRG Code to \$13,355.53 for services rendered to Sheldon Forman between September 20, 2007 and September 26, 2007 by the New York and Presbyterian Hospital. This bill was assigned the unique control number 568750. On November 19, 2007 and December 19, 2007, Countrywide issued and sent a timely verification request to the plaintiff, with a carbon copy to the claimant. The verification request sought the following documents: the completed NF-5 on the revised form, or the signed UP-92 form, the assignment of benefits on the revised form, and the hospital record. The defendant denies receiving the completed NF5 and assignment of benefits allegedly sent via fax on January 14, 2008 by the plaintiff to Erica Sawyer, the defendant's No Fault Claims Examiner. Plaintiff has submitted proof of mailing showing a receipt via fax to telephone number (212) 381-3112. However, a review of the Final Request for Verification of No-Fault Claim (Defendant's Exhibit G) from Erica Sawyer lists a fax number for the claims department as (212) 514-7291, not (212) 381-3112. There is a question of fact as to whether defendant received the additional documentation sent via fax forwarded to Erica Sawyer at fax number (212) 381-3112 precluding the granting of summary judgment on the second cause of action (Forman).

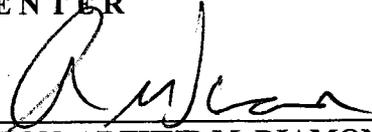
A Preliminary Conference (see 22 NYCRR 202.12) regarding the second cause of action (Forman) shall be held at the Preliminary Conference part, located at the Nassau County Supreme Court on the 16th day of July, 2008, at 9:30 AM. This directive, with respect to the date of the Conference, is subject to the right of the Clerk to fix an alternate date should scheduling require.

The attorneys for the plaintiff shall serve a copy of this order on the Preliminary Conference Clerk and the attorneys for the plaintiffs.

This constitutes the decision and order of this Court.

DATED: June 16, 2008

ENTER



HON. ARTHUR M. DIAMOND
J. S.C.

To:

Attorney for Plaintiff
JOSEPH HENIG, ESQ.
1598 Bellmore Avenue
P.O. Box 1144
Bellmore, N.Y. 11710

Attorney for Defendant
JAFFE & KOUMOURDAS, LLP
40 Wall Street, 12th floor
New York, N.Y. 10005

ENTERED

JUN 19 2008

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**