

Allstate Ins. Co. v Phelps Memorial Hosp.

2013 NY Slip Op 33590(U)

December 5, 2013

Sup Ct, Nassau County

Docket Number: 9359/12

Judge: Antonio I. Brandveen

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This opinion is uncorrected and not selected for official publication.

ORIGINAL

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

ALLSTATE INSURANCE COMPANY,

Plaintiff,

- against -

PHELPS MEMORIAL HOSPITAL a/a/o JORGE
CARNIERO,

Defendant.

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NASSAU COUNTY

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NON JURY TRIAL

The plaintiff insurance brought the action against the defendant hospital pursuant to Insurance Law § 5106(c) and 11 NYCRR § 65-4.10(h)(1)(ii) for a *de novo* review of the matter. Jorge Caniero entered into a contract of insurance with the plaintiff before the November 18, 2010 motor vehicle accident. The plaintiff claims Caniero had significant prior medical history and suffered a stroke notwithstanding the hospital rendered medical services and treatment to Caniero after the motor vehicle accident. The plaintiff received a claim on January 18, 2011 from the hospital regarding those medical services and treatment to Caniero. The plaintiff denied the claim based upon injuries allegedly sustained were not causally related to the motor vehicle incident.

The defendant instituted compulsory arbitration against the plaintiff with the American Arbitration Association. The arbitrator held a hearing on December 18, 2011, and subsequently found Caniero's condition was not casually related to the November 18,

2010 loss thus awarding the defendant \$26,448.69. The plaintiff sought a review of that arbitration award, and the matter was assigned to a master arbitrator, who held the issues being controverted were issues of fact, and he lacked authority to review. The arbitration award was affirmed, and the plaintiff requested a *de novo* review of the matter.

The plaintiff claims, by of the amount in dispute from the arbitration, it is entitled to a *de novo* review of the matter, and it is under no duty to provide coverage for the medical services and treatment to Caniero because those injuries are not causally related to the November 18, 2010 motor vehicle accident. The defendant denies the plaintiff's allegations, and asserts the complaint must be dismissed pursuant to CPLR 3211(a)(7) because it fails to state a cause of action, and the request for relief is untimely.

This Court conducted a non-jury trial on matter on November 7, 2013, and reserved decision. The plaintiff's expert credibly testified the treatment rendered to Jorge Caniero was neither caused by the November 18, 2010 motor vehicle accident nor was there any exacerbation of a pre-existing condition caused by that same accident. The Court finds Jorge Caniero was admitted to Phelps Memorial Hospital on suspicion he experienced a stroke which was not related to the November 18, 2010 motor vehicle accident. The Court also finds the treatment rendered by the defendant was related to the diagnosis of acute CVA hypertension, diabetes, mellitus, coronary artery disease and hyperlipidemia. These conditions were not causally related to the November 18, 2010 motor vehicle accident.

The Court determines the plaintiff satisfies its burden of showing the master arbitrator's award was \$5,000 or greater (*see Allstate Ins. Co. v. Nalbandian*, 89 A.D.3d 648, 931 N.Y.S.2d 698). The Court determines the plaintiff satisfies its burden by providing proof in admissible form to establishing an evidentiary basis showing Jorge Caniero's treated condition was unrelated to the November 18, 2010 motor vehicle accident. (*see Emanvilova v. Pallotta*, 49 A.D.3d 413, 854 N.Y.S.2d 360). The plaintiff proffered medical facts by its expert which were sufficient to show the medical condition for which Jorge Caniero was treated was not related to the November 18, 2010 motor vehicle accident nor was there any exacerbation of a pre-existing condition caused by that same accident (*Bronx Radiology, P.C. v. New York Cent. Mut. Fire Ins. Co.*, 17 Misc.3d 97, 847 N.Y.S.2d 313). The Court also determines the defendant fails to satisfy its burden regarding its affirmative defenses (*cf Mount Sinai Hosp. v Triboro Coach*, 263 A.D.2d 11, 699 N.Y.S.2d 77).

ORDERED, the Court awards plaintiff a *de novo* review of the matter against the defendant hospital pursuant to Insurance Law § 5106(c) and 11 NYCRR § 65-4.10(h)(1)(ii) on the first cause of action, and it is also,

ORDERED, the plaintiff is awarded judgment on the second cause of action declaring Jorge Caniero's treated condition was unrelated to the November 18, 2010 motor vehicle accident, and the plaintiff is under no duty to indemnify Jorge Caniero for any of that treatment, testing or services rendered by the defendant to Jorge Caniero under

Insurance Law § 5106(c) and 11 NYCRR § 65-4.10(h)(1)(ii), and it is also,

ORDERED, the defense affirmative defenses are dismissed, and it is further,

ORDERED, this opinion shall constitute the order and judgment of the Court.

So ordered.

Dated: **December 5, 2013**

ENTER:

A handwritten signature in black ink, appearing to be 'J.S.C.', written over a horizontal line.

J. S. C.

ENTERED
DEC 11 2013
NASSAU COUNTY
COUNTY CLERK'S OFFICE