

The Hospital for Joint Diseases v Travelers Property Casualty Insurance Co.
2005 NY Slip Op 30129(U)
October 31, 2005
Supreme Court, Nassau County
Docket Number: 7549-04/
Judge: Burton S. Joseph
Republished from New York State Unified Court System's E-Courts Service. Search E-Courts (http://www.nycourts.gov/ecourts) for any additional information on this case.
This opinion is uncorrected and not selected for official publication.

Scan

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NASSAU

PRESENT:

**Hon. Burton S. Joseph,
Justice.**

THE HOSPITAL FOR JOINT DISEASES, a/a/o
JODI FRIEDMAN, ROMEO RODRIGUEZ;
THE NEW YORK AND PRESBYTERIAN HOSPITAL,
a/a/o WILLIAM BROWNE,

Plaintiffs,

- against -

Trial/IAS Part 13
Index No. 17459/2004
Motion No. 001 & 002
Motion Date: 10/11/2005

TRAVELERS PROPERTY CASUALTY
INSURANCE COMPANY and FARMINGTON
CASUALTY COMPANY,

Defendants.

Papers Numbered

Notice of Motion, Affirmation & Exhibits Annexed.....	1-2
Affirmation in Opposition.....	
Reply Affirmation.....	3-4
Memorandum of Law.....	

Motion (seq. no. 1) by the attorney for the plaintiff for an Order pursuant to CPLR 3212 awarding summary judgment to the plaintiff is granted. Cross-motion (seq. no. 2) by the attorney for the defendant for an Order dismissing the complaint, is denied.

Plaintiff, the New York and Presbyterian Hospital, is the assignee for health services rendered to William Browne during the period September 21, 2004 through September 24, 2004 arising out of an automobile accident on December 3, 2002.

On October 18, 2004, plaintiff billed the defendant with a Hospital Facility Form (Form N-F 5) and a UB-92, for payment of a hospital bill in the sum of \$24,344.96 [Ex. 2]. The billing was mailed Certified Mail, Return Receipt Requested, and was received by the defendant on October 20, 2004 [Ex. 3]. The defendant failed to either pay the hospital bill or to issue a Denial of Claim Form [Ex.4].

The plaintiff made out a *prima facie* case of entitlement to benefits after the defendant received the form and NF-5 and the claim was overdue, *see, Mary Immaculate Hospital v. Allstate Ins. Co.*, 5 AD3d 742.

The defendant's signing of the certified mail receipt is conclusive evidence of delivery. *See, Public Service Mutual Ins. Co. v. Zucker*, 225 AD2d 308.

The attorney for the defendant does not claim the plaintiff lacks standing due to an incomplete assignment of benefits form, which was argued by the defendants in *New York Hospital Medical Center of Queens v. AIU Insurance*, 8 AD3d 456 and *Hospital for Joint Diseases v. Allstate Ins. Co.*, 21 AD3d 348, but rather that Mr. Kattis lacked authority to act on behalf of the plaintiff.

In *Hospital for Joint Diseases (supra)*, at page 349 the Court stated:

The Supreme Court erred in concluding that the plaintiff lacked standing to bring the action absent proof of a valid assignment from each claimant. The hospital facility forms submitted on behalf of the respective patients indicated that the signature of each patient/assignor was "on file." There was no allegation or evidence that the defendant timely objected to the completeness of the forms or sought verification of the assignments as required by 11 NYCRR 65.15(d). Accordingly, the defendants waived any defenses based thereon. (Citations omitted)

A copy of the Assignment of Benefits Form (*see*, Ex. A to Notice of Cross-Motion and

Ex. 3 to Notice of Motion) submitted on behalf of both parties indicates that the signature of the patient is "On File." The attorney for the defendant contends that this action should be distinguished from *Hospital for Joint Diseases v. Allstate (supra)* because in the within action the assignment also states "William Browne by Peter Kathis authorized representative." There was no prior objection to the plaintiff's billing. The defendant's failure to object to the completeness of the forms or seek verification of the assignment as required by 11 NYCRR 65.15(d) constitutes a waiver of the defenses herein. *New York Hosp. Med. Ctr. Of Queens v. AIU Insurance Co.*, 8 AD2d 456, and *New York and Presbyterian Hosp. v. Empire Ins. Co.*, 286 AD2d 322.

The Nassau County Clerk is directed to enter judgment in favor of the plaintiff the New York and Presbyterian Hospital, against the defendant on the Third Cause of Action in the sum of twenty four thousand three hundred forty four (\$24,344.96) dollars and 96/100, plus statutory no-fault interest from November 20, 2004, to date, and attorney fees pursuant to 11 NYCRR 65-4.6(e); together with the costs and disbursements of this action.

ENTER:

Dated: Mineola, New York
October 31, 2005

Burton J. Joseph

J.S.C.

ENTERED
NOV 03 2005
NASSAU COUNTY
COUNTY CLERK'S OFFICE