

<b>Westchester Med. Ctr. v Allstate Ins. Co.</b>
2007 NY Slip Op 33480(U)
October 22, 2007
Supreme Court, Nassau County
Docket Number: 1943-07/
Judge: Daniel R. Palmieri
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*Sum*

**SHORT FORM ORDER**

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

**Present:**

**HON. DANIEL PALMIERI  
Acting Justice Supreme Court**

-----x  
**WESTCHESTER MEDICAL CENTER, a/a/o  
JOSE CORREA,**

**TRIAL TERM PART: 50**

**Plaintiff,**

**-against-**

**ALLSTATE INSURANCE COMPANY,**

**Defendants**  
-----x

**INDEX NO.:001943/07**

**MOTION DATE:5-15-07  
SUBMIT DATE: 10-5-07  
SEQ. NUMBER - 001**

**MOTION DATE: 8-7-07  
SUBMIT DATE: 10-5-07  
SEQ. NUMBER - 002**

**The following papers have been read on this motion:**

- Notice of Motion, dated 4-17-07.....1**
- Notice of Cross Motion, dated 7-31-07.....2**
- Memorandum of Law in Support of Cross Motion, dated 7-31-07.....3**
- Reply and Opposition to Cross Motion, dated 8-6-07.....4**
- Reply Affidavit in Support of Cross Motion, dated 8-28-07.....5**

The motion by the plaintiff Westchester Medical Center (“WMC”) pursuant to CPLR 3212 for summary judgment is denied. The cross motion by the defendant Allstate Insurance Company (“Allstate”) pursuant to CPLR 3212 for summary judgment is granted and the complaint is dismissed.

This is an action for payment of no-fault benefits by a provider of medical services, as assignee of the covered person’s claim therefor. It is undisputed that assignor Jose Correa was a patient at plaintiff’s facility from July 28 through August 31, 2006. By way of affidavit

of an account representative for the plaintiff, Peter Kattis, and associated documentation, the plaintiff has demonstrated that a billing in the amount of \$121,755.40 for this admission was mailed to the defendant on September 14, 2006 and received September 19, 2006. WMC also presents a partial denial of claim form dated October 23, 2006, which is claimed to be untimely and, in addition, defective in that it is incomplete and incorrectly states the amount in dispute. On December 15, 2006 the defendant made a payment of \$37,560.01 to Taylor Care Center, leaving an unpaid balance of \$84,195.39.

The foregoing constitutes proof sufficient to make out a *prima facie* showing that the plaintiff is entitled to judgment as a matter of law for the balance stated, with statutory interest and attorneys' fees, as it establishes that the defendant failed either to pay the hospital bill or to issue a timely denial within 30 days of receipt of the claim. Insurance Law § 5106(a); 11 NYCRR 65-3.8(a)(1); *see, Hempstead Gen. Hosp. v Insurance Co. of N. Am.*, 208 AD2d 501 (2d Dept. 1994). The burden thus shifts to Allstate to demonstrate that issues of fact exist with regard to plaintiff's right to the relief sought in its complaint. *See generally, Zuckerman v City of New York*, 49 NY2d 557, 562 (1980).

In response, however, the defendant has presented evidence demonstrating that issues of fact exist precluding judgment in plaintiff's favor. By way of affidavit of a no-fault claims representative employed by Allstate, Dietra Tripp, and associated documentation, the defendant has met its burden.

On September 29, 2006 a written statement was sent to Taylor Care Center requesting

its records regarding Correa's admission. Tripp states that upon receipt of the records, and within 30 days thereafter, a statement indicating approval of a partial payment and denial of the balance was issued on October 23, 2006. An NF-10 form bearing this date and containing this information is annexed to her affidavit. Although WMC's presents proof in reply that it voluntarily mailed complete medical records to Allstate, which were received on September 30, 2006 (*i.e.*, the verification request of September 29 was unnecessary and crossed in the mail), this does not mean that the verification request itself was improperly issued, as at the time Allstate did not yet have the records it needed to evaluate the claim. The request for verification therefore tolled the 30-day period to pay or deny the claim until the records were received. 11 NYCRR 65-3.5(a),(b); 65-3.8; *see, New York & Presbyt. Hosp. v Progressive Cas. Ins. Co.*, 5 AD3d 568 (2d Dept. 2004). Accordingly, an issue of fact exists as to the timeliness of the denial.

As noted above, WMC's attorney also claims that the denial itself is defective in that Taylor Care Center is named as the provider, and that the stated amount billed and amount in dispute varies from the plaintiff's billing claim.

However, in a footnote found in Allstate's opposing papers the discrepancy is explained as reflecting the initial hospital charges before an apparent audit by the plaintiff itself, which then sought the lower amount stated in its complaint. Further, the difference in facility name has been adequately addressed by Allstate's proof that WMC and the Taylor Care Center are effectively one and the same for present purposes. Specifically, Tripp states

in reply, and presents documentary proof, that the \$37,560.01 check was accepted and deposited into the account of Westchester County Health Care Corporation, the same account where WMC's checks are deposited. In addition, the Court notes that in stating the amount still due, WMC's affiant acknowledges in his own moving affidavit that this payment reduced the total billed to the amount owed, making no distinction between the two entities.

Accordingly, the motion is denied.

The cross motion is granted. Allstate has presented *prima facie* proof that its coverage limits have been exhausted. This is supported by the statement of its claims representative, who states that the coverage available under its policy was \$150,000, and that the balance sought in this action exceeds those limits. Allstate also presents a payment log document entitled Medical Bill-Loss History, introduced as a business record by Tripp, which indicates that Allstate paid a total \$149,909.60 to various providers who cared for Correa, including plaintiff. Given the *de minimus* difference between the payments indicated in the Medical Bill-Loss history and the undisputed coverage limits, the foregoing constitutes sufficient proof that the defendant is not liable for the charges sought in this action, as they exceed Allstate's maximum exposure under the policy. *New York and Presby. Hosp. v Allstate Ins. Co.*, 28 AD3d 528 (2d Dept. 2006); *see also, Mount Sinai Hosp. v Zurich Am. Ins. Co.*, 15 AD3d 550 (2d Dept. 2005); *Hosp. for Joint Diseases v State Farm Mut. Auto. Ins. Co.*, 8 AD3d 533 (2d Dept. 2004); *New York & Presbyt. Hosp. v Progressive Cas. Ins. Co.*, *supra*. Indeed, it should be noted that an insurer's defense that policy limits have been reached by payments to eligible

providers cannot be waived by a issuing a denial, or making a part payment, beyond the periods established by the Insurance Law and its allied regulations. *New York and Presby. Hosp. v Allstate Ins. Co.*, 12 AD3d 579 (2d Dept. 2004).

In response, the plaintiff has presented no evidence that would place in issue the foregoing proof of exhaustion of benefits as a complete defense to its claim. Its only argument of substance is that payment to other providers was made by Allstate after it received plaintiff's bill on September 19, 2006, but Allstate was entitled to do so while withholding payment to the plaintiff in view of its timely issued request for verification. See, *Nyack Hosp. v General Motors Acceptance Corp.*, 27 AD3d 96 (2d Dept. 2005). Accordingly, summary judgment is granted to the defendant on its cross motion.

This shall constitute the Decision and Order of this Court

ENTER

DATED: October 22, 2007

  
HON. DANIEL PALMIERI  
Acting Supreme Court Justice

**TO: Joseph Henig, P.C.**  
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**Stern & Montana, LLP**  
**Attorney for Defendant**  
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**ENTERED**

OCT 24 2007

**NASSAU COUNTY**  
**COUNTY CLERK'S OFFICE**