

**Matter of St. Paul Travelers Ins. v Complete  
Care Med., P.C.**

2007 NY Slip Op 33949(U)

December 3, 2007

Supreme Court, Nassau County

Docket Number: 0499-07/

Judge: Ute W. Lally

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SHORT FORM ORDER  
SUPREME COURT - STATE OF NEW YORK

Present:

HON. UTE WOLFF LALLY  
Justice.

IAS PART 8  
NASSAU COUNTY  
INDEX NO. 10499/07

In the Matter of the Application of  
ST. PAUL TRAVELERS INSURANCE,

Petitioner,

MOTION DATE: 9/5/07  
MOTION SEQUENCE NO. 1  
X X X

- against -

COMPLETE CARE MEDICAL, P.C.,

Respondent (s).

- The following papers read on this motion to stay arbitration:
- Notice of Motion/Order to show cause . . . . . 1-5
  - Answering Affidavits . . . . . 6,7
  - Replying Affidavits . . . . .

Upon the foregoing papers, it is ordered that this application by petitioner for an order pursuant to CPLR 7503 permanently staying arbitration is denied.

This is a proceeding to permanently stay arbitration that was commenced by respondent seeking to recover first party benefits allegedly payable under an automobile insurance policy pursuant to Article 51 of the Insurance law. The respondent seeks to recover payment for medical testing provided to Julian Barinas, who was involved in an automobile accident on December 7, 2000.

Respondent provided upper and lower nerve testing to Julian Barinas on January 8, 2001. On February 22, 2001 petitioner received a bill from respondent in the amount of \$3,371.62. On February 28, 2001 petitioner issued a verification request letter to the respondent requesting a copy of the initial narrative report. Respondent claims that it did not send a copy of this

report to the petitioner. The respondent commenced arbitration by filing a request form with the American Arbitration Association on April 23, 2007.

The petitioner alleges that respondent's claim constitutes an action to recover upon a liability created or imposed by statute pursuant to CPLR 214. CPLR 214 mandates that such actions be commenced within three years of the occurrence that gave rise to the cause of action. Petitioner asserts that respondent's bill became overdue on March 24, 2001 and that is the date on which the statute of limitations began. The petitioner contends that arbitration must be permanently stayed as the respondent's claim is time barred due to the fact that arbitration was commenced beyond the three year time period required by CPLR 214.

CPLR 213(2) mandates a six year statute of limitations where the action is one based "upon a contractual obligation or liability, express or implied" [CPLR 213(2)]; see also Mandarino v Travelers Property Casualty Inc. Co., 37 AD3d 775). Where an action is based upon both a contractual obligation or liability, and upon a liability imposed by statute, the six year statute of limitations provided in CPLR 213(2) should be applied to the exclusion of the three year statute of limitations required by CPLR 214 (Mandarino v Travelers Property Casualty Ins. Co., supra).

The right of a no-fault claimant, or that of his or her assignee, to recover first-party benefits under the terms of an insurance policy is primarily contractual in nature (Mandarino v Travelers Property Casualty Ins. Co., supra; see also Hanover Insurance Company v Fleisher, 96 AD2d 881). Although the terms of the insurance policy may be mandated by various statutes or regulations this does not alter the fact that the dispute is fundamentally contractual in nature and not a creation of statute (Mandarino v Travelers Property Casualty Ins. Co., supra). The appropriate statute of limitations in these actions is, therefore, the six year time period mandated by CPLR 213(2) (Mandarino v Travelers Property Casualty Ins. Co., supra; see also Nahmias v Merchants Mutual Ins. Co., 91 AD2d 680).

Respondent, as the assignee of Julian Barinas, is seeking to recover first-party benefits from petitioner under the terms of an

insurance policy. The dispute is fundamentally contractual in nature and, accordingly, this court finds that the appropriate statute of limitations is the six year time period mandated by CPLR 213(2).

The petitioner further contends that as the statute of limitations began on March 24, 2001, the date they claim the bill became overdue, the respondent's claim is time barred due to the fact arbitration was commenced beyond the six year time period required by CPLR 213(2). Respondent claims that the statute of limitations did not begin to run on March 24, 2001. The respondent asserts the bill could not be considered past due on March 24, 2001 due to the fact respondent had not complied with petitioner's request for verification.

Payments of first party benefits are overdue if not paid or denied within thirty days after the claimant provides proof and amount of loss sustained [Insurance Law §5106(a); see also New York & Presbyterian Hospital v Allstate Ins. Co., 30 AD3d 492]. This time period may be extended where the insurer, within fifteen days of receipt of the claim, submits a request for additional verification (Nyack Hospital v General Motors Acceptance Corp., 27 AD3d 96; see also Westchester County Medical Center v New York Central Mutual Fire Ins. Co., 262 AD2d 553).

A claim does not need to be paid or denied until all demanded verification is provided (New York & Presbyterian Hospital v Progressive Casualty Ins. Co., 5 AD3d 568, 570; see also Hospital for Joint Diseases v State Farm Mutual Automobile Ins. Co., 8 AD3d 533). When the claimant fails to respond to a verification request the thirty day period in which to pay or deny the claim does not begin to run (New York & Presbyterian Hospital v Progressive Casualty Ins. Co., supra).

Petitioner received the claim on February 22, 2001 and issued a verification request letter six days later. Respondent claims the verification requested was never sent. Petitioner has offered no evidence to refute this claim. The thirty day period in which to pay or deny the claim has not begun to run. The bill cannot be considered overdue until this thirty day time period has ended (New York & Presbyterian Hospital v Allstate Ins. Co., supra).

Petitioner has, therefore, failed to demonstrate that arbitration was commenced more than six years after the respondent's bill became overdue. Petitioner has not established that respondent's claim is time barred. Accordingly, petitioner's motion is denied.

Dated: DEC 03 2007

*Michael J.* J.S.C.

**ENTERED**

DEC 05 2007

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**