

Mary Immaculate Hosp. v Government Empls. Ins. Co.
2008 NY Slip Op 30396(U)
February 4, 2008
Supreme Court, Nassau County
Docket Number: 5395-07/
Judge: William R. LaMarca
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SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 17**

**PRESENT: HON. WILLIAM R. LaMARCA
Justice**

**MARY IMMACULATE HOSPITAL, a/a/o
MARIACRUZ RUIZ-GONZALEZ, DAN
DUARTE, GERALD MCDONALD,
HARRY SANTOSO; ST. BARNABAS
HOSPITAL, a/a/o LIZBETH GONZALEZ,
LIZBETH GONZALEZ,**

**Motion Sequence #001
Submitted November 2, 2007**

Plaintiffs,

-against-

INDEX NO: 5395/07

**GOVERNMENT EMPLOYEES INSURANCE
COMPANY,**

Defendant.

The following papers were read on these motions:

Notice of Motion.....	1
Affirmation in Opposition.....	2
Reply Affirmation.....	3

Relief Requested

Plaintiffs, MARY IMMACULATE HOSPITAL a/a/o MARIA CRUZ RUIZ-GONZALES, DAN DUARTE GERALD MCDONALD and HARRY SANTOSO, and ST. BARNABAS HOSPITAL a/a/o LIZBETH GONZALES and LIZBETH GONZALES on a second claim, move for an order granting them summary judgment against defendant, GOVERNMENT EMPLOYEES INSURANCE COMPANY (hereinafter referred to as "GEICO"), based upon

its alleged failure to make timely payments under the no-fault policies of the respective patient/assignors. Plaintiffs contend that GEICO has failed to act in accordance with Insurance Law §5106 which requires timely payment or denial of the requests for no fault benefits within thirty (30) days of the claim. GEICO opposes the motion, which is determined as follows:

Background

This matter arises out of the alleged failure of GEICO to pay six (6) separate no-fault billings and counsel for plaintiffs states that the actions are joined pursuant to CPLR §1002(a) as the claims arise out of a uniform contract of insurance and involve the interpretation of the same no-fault provisions of the Insurance Law, citing *Hempstead General Hospital v Liberty Mutual Insurance Company*, 134 AD2d 569, 521 NYS2d 469 (2nd Dept. 1987). At the outset, the Court notes that the First, Second and Third causes of action have been withdrawn.

The Statute

11 NYCRR, Part 65, the regulations implementing the Comprehensive Motor Vehicle Insurance Reparations Act, commonly referred to as the No-Fault Law, provides that "No-Fault Benefits are overdue if not paid within 30 calendar days after the insurer receives proof of Claim..." (11 NYCRR 65-3.8[a][1]). Within thirty (30) days of receiving a claim, the insurer is required to either pay or deny the claim in whole or in part (see, Insurance Law §5106[a]; 11 NYCRR 65-3.8 [c]). However, this thirty (30) day period may be extended by a timely demand by the insurance company for further verification of a claim (see, 11 NYCRR 65-3.5). Within 10 business days after receipt of the completed

application for no fault benefits, the insurer must forward, to the parties required to complete them, the prescribed verification forms it will require prior to payment of the initial claim (see, 11 NYCRR 65-3.5[a]). If the demanded verification is not received within thirty (30) days, the insurance company must follow up within ten (10) calendar days of the insurers failure to respond, either by telephone call or mail (see, 11 NYCRR 65-3.6[b]); *New York Hospital Medical Center of Queens v State Farm Mutual Automobile Insurance Company*, 293 AD2d 588, 741 NYS2d 86 [2nd Dept. 2002]). As a complete proof of claim is a prerequisite to receiving no-fault benefits, a claim need not be paid or denied until all demanded verification is provided (see, 11 NYCRR 65-3.5[c]; *Montefiore Medical Center v New York Central Mutual Fire Insurance Company*, 9 AD3d 354, 780 NYS2d 161 (2nd Dept. 2004); *New York & Presbyterian Hospital v American Transit Insurance Co.*, 287 AD2d 699, 733 NYS2d 80 (2nd Dept. 2001); *Hospital for Joint Diseases v Elrac, Inc.*, 11 AD3d 432, 783 NYS2d 612 (2nd Dept. 2004). Statutory interest and attorneys fees may be directed if payment is not timely made on a completed claim. See, Insurance Law § 5106(a), 11 NYCRR §65-3.9 and §3.10.

Fourth Cause of Action- SANTOSO

Plaintiff, MARY IMMACULATE HOSPITAL is the assignee for health services rendered to HARRY SANTOSO on November 13, 2006, arising out of an automobile accident that occurred on November 12, 2006. Plaintiff claims that it billed GEICO with a Hospital Facility Form (Form N-F5) and a UB-92 on January 16, 2007, in the sum of \$761.91, which was received by GEICO on January 17, 2007. It is plaintiff's position that the claim was overdue on February 16, 2007 and that GEICO's payment of the bill on

March 17, 2007 was untimely and that plaintiff is entitled to summary judgment and to interest and attorney fees as a matter of law. Counsel for GEICO asserts that plaintiff has been paid in full on the claim and that no further monies are owed, but does not address plaintiff's claim that the payment was untimely. The Court finds that the payment was overdue and that MARY IMMACULATE HOSPITAL is entitled to summary judgment and to statutory interest and attorney fees, as a matter of law. *Nyack Hospital v Encompass Insurance Company*, 23 AD3d 535, 806 NYS2d 643 (2nd Dept. 2005). *Hempstead General Hospital v Insurance Company of North America*, 208 AD2d 501, 617 NYS2d 478 (2nd Dept. 1994).

Fifth Cause of Action- GONZALES

Plaintiff, ST. BARNABAS HOSPITAL, is the assignee for health services rendered to LIZABETH GONZALES, during the period from December 6, 2006 through December 12, 2006, arising out of an automobile accident that occurred on December 3, 2006. Plaintiff claims that it billed GEICO with a Hospital Facility Form (Form N-F5) and a UB-92, on January 23, 2007, in the sum of \$5317.66, which was received by GEICO on January 26, 2007. It is plaintiff's position that the claim was overdue on February 26, 2007 and that GEICO's payment of the bill on June 26, 2007 was untimely and that plaintiff is entitled to summary judgment and to interest and attorney fees as a matter of law.

In opposition to the motion, the affidavit of Greer Vargas, Senior Claims Examiner for GEICO, the custodian of the file, sets forth the standard operating procedure for processing claims, in the regular course of business, and reflects that she received the instant claim on January 26, 2007, and thereafter sent two (2) timely requests for medical

records as part of the additional verification request, on February 7, 2007 and March 12, 2007, and that the requested information was received by GEICO on June 4, 2007. She states that GEICO issued full payment on June 22, 2007, which was timely, and that no further monies are owed. In reply, counsel for plaintiff hospital points out that plaintiff did not receive GEICO's verification request, dated February 7, 2007, because it was incorrectly mailed to an address in Westbury, New York, although the plaintiff facility is located in the Bronx, New York, and Hospital Receivables Systems, the plaintiff's agent, is located in Bellmore, New York. This is confirmed by Peter Kattis, a Biller and Account Representative for ST. BARNABAS HOSPITAL, who claims that he received only one (1) verification request for medical records, dated March 12, 2007.

Sixth Cause of Action- GONZALES

Plaintiff, ST. BARNABAS HOSPITAL, is the assignee for health services rendered to LIZABETH GONZALES, during the period from December 3, 2006 through December 4, 2006, arising out of an automobile accident that occurred on December 3, 2006. Plaintiff claims that it billed GEICO with a Hospital Facility Form (Form N-F5) and a UB-92, on January 23, 2007, in the sum of \$790.94, which was received by GEICO on January 26, 2007. It is plaintiff's position that the claim was overdue on February 26, 2007 and that GEICO's payment of the bill on June 27, 2007 was untimely and that plaintiff is entitled to summary judgment and to interest and attorney fees as a matter of law.

In opposition to the motion, the affidavit of Greer Vargas, Senior Claims Examiner for GEICO, the custodian of the file, sets forth the standard operating procedure for processing claims, in the regular course of business, and reflects that she received the instant claim on January 26, 2007, and thereafter sent two (2) timely requests for medical

[6]

records as part of the additional verification request, on February 7, 2007 and March 12, 2007, and that the requested information was received by GEICO on June 4, 2007. She states that GEICO issued full payment on June 20., 2007, which was timely, and that no further monies are owed. In reply, counsel for plaintiff hospital states that it never received any requests for additional verification on this claim, which again appear to have been mailed to an address in Westbury, New York, although the plaintiff facility is located in the Bronx, New York, and Hospital Receivables Systems, the plaintiff's agent, is located in Bellmore, New York. This is confirmed by Peter Kattis, a Biller and Account Representative for ST. BARNABAS HOSPITAL, who claims that plaintiff never received a verification request from GEICO. Notwithstanding the denial of any verification requests, it appears that plaintiff forwarded the full hospital record to GEICO on June 4, 2007.

The Law

In viewing motions for summary judgment, it is well settled that summary judgment is a drastic remedy which may only be granted where there is no clear triable issue of fact (see, *Andre v Pomeroy*, 35 NY2d 361, 362 NYS2d 131, 320 NE2d 853 [C.A. 1974]; *Mosheyev v Pilevsky*, 283 AD2d 469, 725 NYS2d 206 [2nd Dept. 2001]). Indeed, "[e]ven the color of a triable issue, forecloses the remedy" *Rudnitsky v Robbins*, 191 AD2d 488, 594 NYS2d 354 [2nd Dept. 1993]). Moreover "[i]t is axiomatic that summary judgment requires issue finding rather than issue-determination and that resolution of issues of credibility is not appropriate" (*Greco v Posillico*, 290 AD2d 532, 736 NYS2d 418 [2nd Dept. 2002]; *Judice v DeAngelo*, 272 AD2d 583, 709 NYS2d 817 [2nd Dept. 2000]; see also *S.J. Capelin Associates, Inc. v Globe Mfg. Corp.*, 34 NY2d 338, 357 NYS2d 478, 313 NE2d 776

[C.A.1974]). Further, on a motion for summary judgment, the submissions of the opposing party's pleadings must be accepted as true (*see Glover v City of New York*, 298 AD2d 428, 748 NYS2d 393 [2nd Dept. 2002]). As is often stated, the facts must be viewed in a light most favorable to the non-moving party. (*See, Mosheyev v Pilevsky, supra*). The burden on the moving party for summary judgment is to demonstrate a *prima facie* entitlement to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any material issue of fact (*Ayotte v Gervasio*, 81 NY2d 1062, 601 NYS2d 463, 619 NE2d 400 [C.A.1993]; *Winegrad v New York University Medical Center*, 64 NY2d 851, 487 NYS2d 316, 476 NE2d 642 (C.A. 1985); *Drago v King*, 283 AD2d 603, 725 NYS2d 859 [2nd Dept. 2001]). If the initial burden is met, the burden then shifts to the non-moving party to come forward with evidence to demonstrate the existence of a material issue of fact requiring a trial. (CPLR§ 3212, subd [b]; see also *GTF Marketing, Inc. v Colonial Aluminum Sales, Inc.*, 66 NY2d 965, 498 NYS2d 786, 489 NE2d 755 [C.A. 1985]; *Zuckerman v City of New York*, 49 NY2d 557, 427 NYS2d 595, 404 NE2d 718 [C.A. 1980]). The non-moving party must lay bare all of the facts at its disposal regarding the issues raised in the motion. (*Mgrditchian v Donato*, 141 AD2d 513, 529 NYS2d 134 [2nd Dept. 1988]).

Conclusion

As to the Fourth Cause of Action- SANTOSO

After a careful reading of the submissions herein, it is the judgment of the Court that no-fault claims that were never actually denied but were not paid within thirty (30) days of presentation, are "overdue" within the meaning of the Insurance Law requiring an award of interest and attorney fees on the claim from the date the claim was first presented.

[8]

Hempstead General Hospital v Insurance Company of North America, supra. Attorney's fees are limited to 20% of the amount of first party benefits, plus interest thereon, subject to a maximum fee of \$850.00. See, 11 NYCRR §65-4.6(e). Interest shall be assessed at the rate of 2% per month. See, Insurance Law § 5106 (a); *Smithtown General Hospital v State Farm Mutual Auto Insurance Co.*, 207 AD2d 338, 615 NYS2d 426 (2nd Dept. 1994).

As to the Fifth and Sixth Causes of Action- GONZALES

After a careful reading of the submissions herein, it is the judgment of the Court that plaintiff has not demonstrated that it is entitled to judgment, as a matter of law. The record before the Court raises questions of fact with respect to the service of requests for verification and whether same were timely mailed to an appropriate address. While it appears that, full payment was timely paid upon receipt of the full hospital records, in June 2007, whether the time to pay the bill was enlarged by a proper demand for verification is a question of fact that precludes the plaintiffs request for summary judgment. Accordingly, it is hereby

ORDERED, that MARY IMMACULATE HOSPITAL's motion for summary judgment on the Fourth cause of action is granted; and it is further

ORDERED, that ST. BARNABAS' motion for summary judgment on the Fifth and Sixth causes of action is denied; and it is further

ORDERED, that the Fifth and Sixth causes of action are severed and continued, and it is further


ORDERED, that the parties shall appear for a Preliminary Conference on March 4, 2008, at 9:30 A.M. in Differentiated Case Management Part (DCM) at 100 Supreme Court

Drive, Mineola, New York, to schedule all discovery proceedings. A copy of this order shall be served on all parties and on DCM Case Coordinator Richard Kotowski. **There will be no adjournments**, except by formal application pursuant to 22 NYCRR §125.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court. Settle Judgment on the Forth cause of action.

Dated: February 4, 2008


WILLIAM R. LaMARCA, J.S.C.

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ENTERED

FEB 08 2008

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

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