| **Wycoff Hgts. Med. Ctr. v Country Wide Ins. Co.** |
| --- |
| 2008 NY Slip Op 30745(U) |
| March 4, 2008 |
| Supreme Court, Nassau County |
| Docket Number: 9783-07/ |
| Judge: William R. LaMarca |
|  |
|  |

SHORT FORM ORDER

Scan

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

Present: HON. WILLIAM R. LaMARCA
Justice

---

WYCOFF HEIGHTS MEDICAL CENTER, a/a/o ZEE CHAN WONG; THE NEW YORK HOSPITAL MEDICAL CENTER OF QUEENS a/a/o JOSEPH LLANOS,

Plaintiffs,

-against-

COUNTRYWIDE INSURANCE COMPANY,

Defendant.

---

Motion Sequence #1, #2
Submitted December 19, 2007
XXX

INDEX NO: 9783/07

**The following papers were read on these motions:**

**Notice of Motion.....1**
**Notice of Cross-Motion.....2**
**Reply and Opposition to Cross-Motion.....3**
**Reply Affirmation.....4**
**Sur-Reply Affirmation- Unauthorized, Not considered.**

Plaintiffs, WYCKOFF HEIGHTS MEDICAL CENTER (hereinafter referred to as "WYCKOFF") a/a/o ZEE CHAN WONG, and THE NEW YORK HOSPITAL MEDICAL CENTER OF QUEENS (hereinafter referred to as "QUEENS") a/a/o JOSEPH LLANOS, move for an order, pursuant to CPLR §3212, granting summary judgment for the failure of defendant, COUNTRY WIDE INSURANCE COMPANY (hereinafter referred to as "COUNTRYWIDE'), to pay two (2) separate no-fault billings. COUNTRYWIDE opposes

the motion and cross-moves for summary judgment dismissing the complaint. The motion and cross-motion are determined as follows:

In March of 2005, WYCKOFF rendered medical services to its assignor, ZEE CHAN WONG, for injuries arising out of an automobile accident which occurred on March 22, 2005. WYCKOFF alleges that: (1) on April 24, 2007(over two years after the accident occurred), employees of its third-party biller personally mailed, via certified mail, a bill for services rendered in the amount of $9,310.77, to COUNTRYWIDE; (2) that the defendant allegedly received the bill on April 27, 2007; and (3) that payment of the billed amount has not been made.

The defendant asserts that it denied the foregoing claim in a timely fashion, by notice dated May 2, 2007 (Defendant's Exhibit "E"). Notably, in rejecting the claim, the defendant's denial notice relies on the ground that the claim was submitted over two (2) years after services were rendered, in violation of 11 NYCRR §§ 65-1.1, 65-2.4[c], which requires, *inter alia*, the submission of a claim within forty-five (45) days.

The complaint also contains a second cause of action for medical services rendered by co-plaintiff, QUEENS, to JOSEPH LLANOS, who received treatment between February and March of 2007as a result of an accident that occurred on February 14, 2007. With respect to LLANOS, QUEENS alleges that its billing agent personally mailed, via certified mail, a bill in the amount of $13,626.46 to the defendant, on March 29, 2007, that was received by defendant on March 31, 2007, but that no payment has been received to date.

The defendant contends, however, that on April 3, 2007, it mailed a request for verification of the LLANOS claim to QUEENS and received no response (*see,* 11 NYCRR

§ 65-3.5[b]) and thereafter sent a second request on May 3, 2007, and has similarly received no response.

In its reply and opposition papers, the plaintiff submits the affidavit of Sharon Shafi, a Secretary employed by Hospital Receivables Systems Inc., who handles the no-fault accounts for QUEENS, and who asserts, *inter alia*, that on April 12, 2007, she mailed what she claims is the complete LLANOS medical file to COUNTRYWIDE, as evidenced by attached and executed return receipts, dated April 13, 2007.

It is settled that "the injured party or the assignee [typically a hospital, as in the case here] must submit proof of claim for medical treatment no later than 45 days after services are rendered" (*Hospital for Joint Diseases v Travelers Property Cas. Ins. Co.*, 9NY3d 312, 849 NYS2d 473, __NE2d __ [C.A.2007]; 11 NYCRR §§ 65-1.1, 65-2.4[c]; *New York & Presbyterian Hosp. v American Transit Ins. Co.*, 45 AD3d 822, 846 NYS2d 352 [2nd Dept. 2007]; *St. Vincent's Hosp. & Medical Center v Country Wide Ins. Co.*, 24 AD2d 748, 809 NYS2d 88 [2nd Dept. 2005]).

"Upon receipt of one or more of the prescribed verification forms used to establish proof of claim, such as the NYS Form NF-5, an insurer has 15 business days within which to request 'any additional verification required by the insurer to establish proof of claim'(11 NYCRR § 65-3.5[b])" or it may "request 'the original assignment or authorization to pay benefits form to establish proof of claim' within this time frame" (*Hospital for Joint Diseases v Travelers Property Cas. Ins. Co., supra, quoting from,* 11 NYCRR § 65-3.11[c]).

It is settled that "an insurance company must [otherwise] pay or deny the claim within 30 calendar days after receipt of the proof of claim" (*Hospital for Joint Diseases v*

*Travelers Property Cas. Ins. Co., supra*; *Presbyterian Hosp. in the City of New York v Maryland Cas. Co.*, 90 NY2d 274, 660 NYS2d 536, 638 NE2d 1 [C.A. 1197]; *Hospital for Joint Diseases v New York Cent. Mut. Fire Ins. Co.*, 44 AD3d 903, 844 NYS2d 371 [2nd Dept. 2007]; *Mount Sinai Hosp. v Chubb Group of Ins. Companies*, 43 AD3d 889, 843 NYS2d 634 [2nd Dept. 2007]; *LMK Psychological Services, P.C. v Liberty Mut. Ins. Co.*, 30 AD3d 727, 816 NYS2d 587 [3rd Dept. 2006]; *see*, Insurance Law § 5106[a]). However, "[i]f an insurer seeks additional verification * * * the 30-day window is tolled until it receives the relevant information requested (*Hospital for Joint Diseases v Travelers Property Cas. Ins. Co., supra*).

Notably, "[a]mounts not paid within the 30-day time frame are 'overdue' and as a consequence, "an insurer that has failed to either pay or deny the claim within the 30-day period may be precluded from interposing a defense" (*Fair Price Medical Supply Corp. v Travelers Indem. Co.*, 42 AD3d 277, 837 NYS2d 350 [2nd Dept. 2007]; *see also, Hospital for Joint Diseases v Travelers Property Cas. Ins. Co., supra*; *Valley Psychological, P.C. v Liberty Mut. Ins. Co.*, 30 AD3d 718, 816 NYS2d 239 [3rd Dept. 2006]; Insurance Law § 5106[a]).

Here, while WYCKOFF has submitted, *inter alia*, the affidavit of its third-party biller attesting to the fact that the WONG bill was mailed and that the defendant failed to either pay the bill or issue a timely denial of claim form, the defendant has submitted opposing evidence establishing that it timely mailed its denial notice to the plaintiff (*e.g., New York & Presbyterian Hosp. v American Transit Ins. Co.*, 45 AD3d 822, 846 NYS2d 352 [2nd Dept. 2007]).

Generally, "'proof that an item was properly mailed gives rise to a rebuttable presumption that the item was received by the addressee'" (*New York and Presbyterian Hosp. v Allstate Ins. Co.*, 29 AD3d 547, 814 NYS2d 687 [2nd Dept 2006], *quoting from, Matter of Rodriguez v Wing*, 251 AD2d 335, 673 NYS2d 734 [2nd Dept. 1998]; *see also, Nassau Ins. Co. v Murray*, 46 NY2d 828, 414 NYS2d 117, 386 NE2d 1085 [C. A. 1978]; *Badio v Liberty Mut. Fire Ins. Co.*, 12 AD3d 229, 785 NYS2d 54 [1st Dept. 2004]; *Residential Holding Corp. v Scottsdale Ins. Co.*, 286 AD2d 679, 728 NYS2d 775 [2nd Dept. 2001]. "'The presumption may be created by either proof of actual mailing or proof of a standard office practice or procedure designed to ensure that items are properly addressed and mailed'" (*New York and Presbyterian Hosp. v Allstate Ins. Co., supra* at 547, *quoting from, Residential Holding Corp. v Scottsdale Ins. Co., supra*; *cf., Westchester Medical Center v Liberty Mut. Ins. Co.*, 40 AD3d 981, 837 NYS2d 210 [2nd Dept. 2007]; *People ex rel. De Marta v Sears*, 31 AD3d 918, 819 NYS2d 584 [3rd Dept. 2006]).

At bar, COUNTRYWIDE has submitted the affidavit of No-Fault Litigation Supervisor Veronica Pabon, who has described with specificity the usual and customary office practices adopted and employed by the defendant with respect to the receipt, review and processing of claims. In particular, Pabon has detailed the manner in which the defendant's claims examiners assess claims as they are received; the specific steps taken by examiners in cases where a denial and/or request for further verification is to be issued; the procedures used to physically collect and route documents within the office; and the processes by which documents are weighed, stamped and then physically transported by designated employees to the postal authorities for mailing. Ms. Pabon further avers that

she possesses personal knowledge of the foregoing procedures; that she was employed during the time periods when the subject mailing was made; and that her duties include "implementation, enforcement and supervision" of the foregoing practices, which, she asserts, were followed during the processing of the subject claims.

Contrary to WYCKOFF's contention, Ms. Pabon's affidavit and her description of the defendant's customary business practices and mailing procedures are not conclusory (*cf., Westchester Medical Center v Countrywide Ins. Co., supra*). Nor was it required that the defendant submit the affidavit of the person who actually mailed the notices, since the standard office practice and procedures described are sufficient to raise a presumption that the items were properly addressed and mailed (*see generally, Bossuk v Steinberg,* 58 NY2d 916, 460 NYS2d 509, 447 NE2d 56 [C.A. 1983]; *Nassau Ins. Co. v Murray, supra,* at 829; *Badio v Liberty Mut. Fire Ins. Co., supra; Matter of Lumbermens Mutual Casualty Company*, 135 AD2d 373, 521 NYS2d 432 [1st Dept. 1987]).

Although WYCKOFF has denied receipt of the defendant's claim denial and verification notices, it is settled that "[d]enial of receipt * * * standing alone, is insufficient to rebut the presumption" of proper mailing (*Nassau Ins. Co. v Murray, supra,* at 829 *see also, Schaefer v HCP Health Care Plan*, 283 AD2d 977, 723 NYS2d 79 [4th Dept. 2001]. Moreover, it undisputed with respect to the WONG claim, that WYCKOFF did not submit proof of its claim within 45 days after services had been rendered. Rather, the claim was submitted in April of 2007 – over two years after services had been provided. Accordingly, it is the judgment of the Court that defendant's denial as to WONG was proper, and therefore, summary judgment dismissing the first cause of action is appropriate.

However, and with respect to the second cause of action, QUEENS a/a/o LLANOS, the plaintiff's opposing/reply submissions contain proof that the LLANOS medical records were, in fact, transmitted to and received by the defendant in April of 2007. In support of this claim, the plaintiff's opposition papers include: (1) a sworn statement by the individual who mailed the LLANOS medical documents; and (2) signed and labeled return receipts indicating that the materials were received by the defendant on April 13, 2007. The defendant's December 12, 2007 reply submission – filed after and in response to the plaintiff's opposition papers – do not comment upon or otherwise dispute the plaintiff's claims that the complete LLANOS medical file was provided in mid-April and received by the defendant on April 13, 2007.

It is well settled that "[f]acts appearing in the movant's papers which the opposing party does not controvert, may be deemed to be admitted" (*SportsChannel Associates v Sterling Mets, L.P.*, 25 AD3d 314, 807 NYS2d 61 [1st Dept. 2006], *quoting from, Kuehne & Nagel v Baiden*, 36 NY2d 539, 369 NYS2d 667, 330 NE2d 622 [C.A.1975]; *see also, McNamee Const. Corp. v City of New Rochelle*, 29 AD3d 544, 817 NYS2d 295 [2nd Dept. 2006]). Herein, it is undisputed that COUNTRYWIDE has neither timely denied nor paid the subject LLANOS claim. The defendant's bare assertion that no records have been received is insufficient to rebut the evidence submitted by the plaintiff that the medical filed was, in fact, provided (*Nassau Ins. Co. v Murray*, *supra*, at 829). Based on the foregoing, the cross-motion by QUEENS for summary judgment on the second cause of action is granted. Accordingly, it is hereby

**ORDERED** that plaintiffs' motion for summary judgment is granted with respect to the second cause of action, and the motion is otherwise denied; and it is further

**ORDERED** that the defendant's cross-motion for summary judgment is granted to the extent that the first cause of action is dismissed and the cross-motion is otherwise denied.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: March 4, 2008

WILLIAM R. LaMARCA, J.S.C.

TO: Joseph Henig, PC
Attorney for Plaintiffs
2598 Bellmore Avenue
Bellmore, NY 11710

Jaffe & Koumourdas, LLP
Attorneys for Defendant
40 Wall Street, 12th Floor
New York, NY 10005



wycoffmedcenter&nyhospital-countrywideins,#1,#2/sumjudg