

**Mary Immaculate Hosp.-Caritas Health Care v
Government Empls. Ins. Co.**

2010 NY Slip Op 31079(U)

April 20, 2010

Sup Ct, Nassau County

Docket Number: 14588/09

Judge: Denise L. Sher

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.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

MARY IMMACULATE HOSPITAL- CARITAS HEALTH
CARE a/a/o STEVEN BUSH, THE NEW YORK AND
PRESBYTERIAN HOSPITAL a/a/o MARY A.
ALMARINES, JANNET WRIGHTWATSON,

Plaintiffs,

- against -

GOVERNMENT EMPLOYEES INSURANCE
COMPANY,

Defendant.

TRIAL/IAS PART 32
NASSAU COUNTY

Index No.: 14588/09
Motion Seq. No.: 01
Motion Date: 12/02/09

The following papers have been read on this motion:

	<u>Papers Numbered</u>
<u>Notice of Motion for Summary Judgment, Affirmation and Exhibits</u>	<u>1</u>
<u>Affirmation in Opposition, Affidavit and Exhibits</u>	<u>2</u>
<u>Reply Affirmation and Exhibit</u>	<u>3</u>

Upon the foregoing papers, it is ordered that the motion is decided as follows:

In an action pursuant to Insurance Law § 5106(a) for the alleged failure of defendant to pay three separate no-fault billings, plaintiffs move for summary judgment. Defendant opposes plaintiffs' motion.

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.

Pursuant to plaintiffs' moving papers, the first cause of action with respect to Mary Immaculate Hospital-Caritas Health Care a/a/o Steve Bush, is hereby withdrawn.

In the second cause of action, plaintiff, The New York and Presbyterian Hospital, is the assignee for health services rendered to Mary Almarines ("Almarines") during the period of May 22, 2009 through May 23, 2009 arising out of an automobile accident on May 22, 2009. On June 9, 2009, plaintiff billed defendant with a Hospital Facility Form (Form N-F 5) for payment of a hospital bill in the sum of \$4,931.03. A form UB-04 and DRG Master Output Report were attached to the bill. Plaintiff claims that the bill was mailed Certified Mail, Return Receipt Requested, and was received by the defendant on June 10, 2009. Plaintiff argues that defendant failed to pay the full hospital bill within thirty days or to timely issue a Denial of Claim Form within thirty days. On August 31, 2009, the defendant paid plaintiff \$4,931.03. Plaintiff alleges that defendant's payment of the hospital bill was untimely and that statutory no-fault interest and attorney fees are due as a matter of law.

Defendant states that it received the Almarines bill from plaintiff on June 10, 2009. On June 19, 2009, defendant sent an additional verification request to plaintiff. On July 20, 2009, defendant once again sent an additional verification request to plaintiff. Defendant received the requested information on August 13, 2009. On August 20, 2009, defendant sent plaintiff a check in the amount of \$4,931.03 as full payment of the Almarines bill, according to the proper fee schedule. Defendant denied the balance of the bill which, it claimed, constituted what was billed over the fee schedule. Defendant asserts that it timely, properly and fully reimbursed plaintiff according to the fee schedule for the billed-for services of the Almarines claim.

Plaintiff replies that while "defendant's verification asked for an itemized bill with

procedure codes as well as information with respect to the hospital physicians,...the plaintiff billed with a completed Form NF-5 (Hospital Facility Form) which is a prescribed no-fault bill (11 NYCRR 65-3.4 (c)(6)). No further bill was required for the plaintiff's *prima facie* case....As a courtesy, the plaintiff attached a Form UB-04 to the no-fault bill, by which the insurer could determine the medical procedures, and treatment rendered to the patient.”

With respect to the second cause of action, the Almarines claim, the Court holds that plaintiff established its *prima facie* entitlement to judgment as a matter of law by submitting evidence that the prescribed statutory billing forms had been mailed and received and that defendant had failed to either pay or deny the claim within the requisite thirty-day period. *See Westchester Medical Center v. Lincoln General Insurance Company*, 60 A.D.3d 1045, 877 N.Y.S.2d 340 (2d Dept. 2009). The two additional verification request letters that defendant sent to plaintiff advising plaintiff that the processing of its claims to recover no-fault medical benefits under an insurance contract would be delayed pending the receipt of “[a]n itemized bill with appropriate no-fault procedure and diagnosis codes, doctor’s license number, specialty and tax identification number” did not serve to toll the thirty-day statutory period to either pay or deny the claim. *See id.* Defendant was not entitled to delay payment of no-fault medical benefits to assignee hospital while awaiting the information requested in the aforementioned verification letters since defendant was required by law to accept the completed hospital billing form in lieu of verification of hospital treatment. *Id.*

It is well settled that the proponent of a motion for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law by providing sufficient evidence to demonstrate the absence of material issues of fact. *See Sillman v. Twentieth*

Century-Fox Film Corp., 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957); *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986); *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980); *Bhatti v. Roche*, 140 A.D.2d 660, 528 N.Y.S.2d 1020 (2d Dept. 1988). To obtain summary judgment, the moving party must establish its claim or defense by tendering sufficient evidentiary proof, in admissible form, sufficient to warrant the court, as a matter of law, to direct judgment in the movant's favor. See *Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065, 416 N.Y.S.2d 790 (1979). Such evidence may include deposition transcripts, as well as other proof annexed to an attorney's affirmation. See CPLR § 3212 (b); *Olan v. Farrell Lines Inc.*, 64 N.Y.2d 1092, 489 N.Y.S.2d 884 (1985).

If a sufficient *prima facie* showing is demonstrated, the burden then shifts to the non-moving party to come forward with competent evidence to demonstrate the existence of a material issue of fact, the existence of which necessarily precludes the granting of summary judgment and necessitates a trial. See *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980), *supra*. When considering a motion for summary judgment, the function of the court is not to resolve issues but rather to determine if any such material issues of fact exist. See *Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395, 165 N.Y.S.2d 498 (1957), *supra*. Mere conclusions or unsubstantiated allegations are insufficient to raise a triable issue. See *Gilbert Frank Corp. v. Federal Ins. Co.*, 70 N.Y.2d 966, 525 N.Y.S.2d 793 (1988).

Further, to grant summary judgment, it must clearly appear that no material triable issue of fact is presented. The burden on the court in deciding this type of motion is not to resolve issues of fact or determine matters of credibility, but merely to determine whether such issues exist. See *Barr v. Albany County*, 50 N.Y.2d 247, 428 N.Y.S.2d 665 (1980); *Daliendo v. Johnson*, 147 A.D.2d 312, 543 N.Y.S.2d 987 (2d Dept. 1989).

As previously stated, plaintiff established its prima facie entitlement to judgment as a matter of law. In opposition, defendant has failed to raise a triable issue of fact. Therefore, plaintiff's motion, pursuant to CPLR § 3212, for an order granting summary judgment on the second cause of action, the Almarines claim, for statutory interest and attorney fees pursuant to 11 NYCRR 65-4.6(e) is hereby granted. Accordingly, plaintiff is directed to submit judgment on notice to the clerk for said statutory interest and attorney fees.

In the third cause of action, plaintiff, The New York and Presbyterian Hospital, is the assignee for health services rendered to Jannet Wright-Watson ("Wright-Watson") during the period of March 25, 2009 through March 28, 2009 arising out of an automobile accident on March 25, 2009. On April 22, 2009, plaintiff billed defendant with a Hospital Facility Form (Form N-F 5) for payment of a hospital bill in the sum of \$32,183.35. A form UB-04 and DRG Master Output Report were attached to the bill. Plaintiff claims that the bill was mailed Certified Mail, Return Receipt Requested, and was received by the defendant on April 23, 2009. Plaintiff argues that defendant failed to pay the full hospital bill within thirty days or to timely issue a Denial of Claim Form.

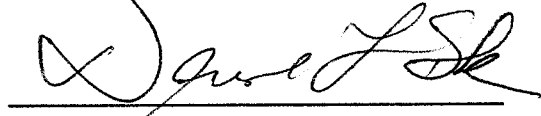
Defendant states that it has no records of ever receiving the subject bill for the Wright-Watson claim. Defendant asserts that "[i]t is in the regular course of business that a bill would be logged in to various computer applications maintained by GEICO, as testified to within Exhibit 'A.' No such applications reflect service of such a bill." Defendant further contends that with regard to the Wright-Watson cause of action, the subject policy of insurance has been exhausted. The relevant policy of the Wright-Watson claim was subject to \$50,000.00 PIP limits and the PIP/Med Register-Payment Record (Defendant's Exhibit E) evinces that the full \$50,000.00 had been paid out as well as showing that defendant never received the subject bill.

Plaintiff replies that “[t]here is no merit to the defendant’s conclusory statement that ‘GEICO has no record of ever receiving this bill’” and that “defendant’s representative signed a certified mail receipt for the hospital bill on April 23, 2009. A presumption of receipt was created, and the defendant’s mere denial is insufficient to create a triable issue of fact.”

While the Court finds that plaintiff’s argument that a “presumption of receipt was created” applies in the present matter, the Court finds that the issue raised by defendant that the subject policy of insurance has been exhausted, sworn to in the supporting affidavit of Greer Vargas, Senior Claims Examiner with defendant, GEICO, raises a triable issue of fact. Therefore, plaintiff’s motion, pursuant to CPLR § 3212, for an order granting summary judgment on the third cause of action, the Wright-Watson claim, in the sum of \$32,183.35 plus statutory interest and attorney fees pursuant to 11 NYCRR 65-4.6(e) together with the costs and disbursements of this action is hereby denied.

This constitutes the decision and order of this Court.

ENTER:



DENISE L. SHER
A.J.S.C.

Dated: Mineola, New York
April 20, 2010

ENTERED
APR 26 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE