

**NYU-Hosp. for Joint Diseases v Nationwide Mut. Ins.  
Co.**

2010 NY Slip Op 33113(U)

October 25, 2010

Supreme Court, Nassau County

Docket Number: 8322/10

Judge: Denise L. Sher

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**SHORT FORM ORDER**

SUPREME COURT OF THE STATE OF NEW YORK

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

NYU-HOSPITAL FOR JOINT DISEASES,  
a/a/o GEORGE JENNINGS;  
MOUNT SINAI HOSPITAL,  
a/a/o RICHARD CRAVEIRO;  
ST. VINCENT HOSPITAL & MEDICAL CENTER,  
a/a/o SUSAN MANNHEIM,

TRIAL/IAS PART 32  
NASSAU COUNTY

Plaintiffs,

Index No.: 8322/10  
Motion Seq. Nos.: 01, 02  
Motion Dates: 07/16/10  
08/20/10

- against -

NATIONWIDE MUTUAL INSURANCE COMPANY,

Defendant.

**The following papers have been read on these motions:**

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

Plaintiffs, NYU-Hospital for Joint Diseases (“NYU”), a/a/o George Jennings (“Jennings”), Mount Sinai Hospital (“Mount Sinai”), a/a/o Richard Craveiro (“Craveiro”) and St. Vincent Hospital & Medical Center (“St. Vincent”), a/a/o Susan Mannheim (“Mannheim”), in actions pursuant to Insurance Law § 5106(a) for the failure of the defendant to pay no-fault billings, move pursuant to CPLR § 3212 for an order granting summary judgment to plaintiffs. Defendant Nationwide Mutual Insurance Company (“Nationwide”), cross-moves, pursuant to CPLR § 3212(b), for an order granting summary judgment and denying plaintiffs’ motion.

First Cause of Action - NYU/Jennings

Pursuant to plaintiffs' reply and opposition to defendant's cross-motion, plaintiffs withdraw the first cause of action.

Second Cause of Action - Mount Sinai/Craveiro

Plaintiff is a hospital who alleges to have rendered medical treatment to assignor Craveiro for injuries suffered in an automobile accident. Defendant is a liability insurance carrier which provided no-fault benefits to the assignor. On March 11, 2010, plaintiff billed the defendant with a Hospital Facility Form (Form N-F 5) for payment of a hospital bill in the sum of \$4,120.63 with respect to treatment received by Mr. Craveiro between January 31, 2010 and February 5, 2010 for injuries received as a result of an automobile accident which occurred on January 31, 2010. A form UB-04 and DRG Master Output Report were attached to the bill. The bill was mailed Certified Mail, Return Receipt Requested, and was received by defendant on March 12, 2010. Plaintiff submits that defendant failed to either pay the hospital bill or to issue a proper Denial of Claim Form and that said bill remains unpaid as of the date of the present motion.

Plaintiff commenced the instant action seeking payment for the amount due as per the March 11, 2010 hospital bill - \$4,120.63. Plaintiff seeks summary judgment on its complaint on the basis that defendant failed to either pay the hospital bill or to issue a proper Denial of Claim Form. Defendant moves for summary judgment dismissing the complaint on the grounds that the affidavit submitted in support of plaintiff's motion was not sufficient to establish its *prima facie* entitlement to summary judgment. Defendant also submits that upon receipt of the aforementioned bill for Craveiro, on March 16, 2010, defendant issued and sent a verification request to plaintiff Mt. Sinai requesting assignor Craveiro's discharge summary, admission history and physical and ER record. Defendant contends that when plaintiff failed to respond to the verification request, defendant issued a second timely verification request to plaintiff Mt. Sinai dated April 5, 2010, requesting the same documents. Defendant argues that its verification letters were issued well within the time provided in No-Fault regulations which gave defendant fifteen business days in which to request verification of plaintiff's claim. Defendant further argues that defendant's verification requests tolled the thirty day time period in which defendant

had to either pay or deny plaintiff's claims. Defendant submits that the thirty day period which the insurer has to either pay or deny the claim does not begin to run until all the requested verification is provided. Therefore, since plaintiff has failed to provide the requested information/documents in response to defendant's verification letter, defendant's time to pay or deny plaintiff's claims under the Insurance Law and No-Fault Regulations has not started to run and will not start to run until the requested verification is received.

In reply, plaintiff claims that it does not have a record of receiving the defendant's verification requests for the medical records and that the conclusory affidavit of Linda Manning is insufficient to prove that the requests were mailed properly or that the defendant's office practice was designed to ensure proper mailing.

#### Third Cause of Action - St. Vincent's/Mannheim

Plaintiff is a hospital who alleges to have rendered medical treatment to assignor Mannheim for injuries suffered in an automobile accident. Defendant is a liability insurance carrier which provided no-fault benefits to the assignor. On December 17, 2009, plaintiff billed the defendant with a Hospital Facility Form (Form N-F 5) for payment of a hospital bill in the sum of \$10,020.46 with respect to treatment received by Ms. Mannheim between November 22, 2009 through December 3, 2009 for injuries received as a result of an automobile accident which occurred on November 22, 2009. A form UB-04 and DRG Master Output Report were attached to the bill. The bill was mailed Certified Mail, Return Receipt Requested, and was received by defendant on December 21, 2009. Plaintiff submits that defendant failed to either pay the hospital bill or to issue a proper timely Denial of Claim Form. On January 26, 2010, the defendant paid \$8,666.12 leaving an unpaid balance of \$1,354.34. Plaintiff submits that the defendant's partial payment of the Hospital Bill was untimely and that the balance plus statutory no-fault interest and attorney fees are due as a matter of law. Plaintiff further argues that defendant issued an untimely defective denial of claim dated January 22, 2010. In addition to being untimely, the denial of claim contains the wrong dollar amount of plaintiff's bill and wrong amount in dispute. The reasons stated for the denial of health benefits are defective in that the defendant incorrectly reduced the amount owed to plaintiff.

Plaintiff commenced the instant action seeking payment for the amount due as per the

December 17, 2009 hospital bill - \$2,467.13. Plaintiff seeks now summary judgment for the sum of \$1,354.34 plus statutory interest and attorneys fees on the basis that defendant was obligated to pay or deny the claims within thirty days of receipt of same. Defendant moves for summary judgment dismissing the complaint on the grounds that defendant fully paid plaintiff for the dates of service of November 22, 2009 though December 3, 2009. Defendant asserts that on December 22, 2009, it received an NF-5 form showing a total of \$10,020.46 and referencing in box #20 that an itemized bill was attached and then attached to said NF-5 form was the itemized bill demanding in box#55 that estimated amount of \$8,667.14 for dates of service of November 22, 2009 though December 3, 2009. On January 4, 2010, defendant timely issued a verification letter requesting documents required for verification of facts and plaintiff's claim needed to determine applicability to No-Fault coverage. On January 19, 2010, defendant received from plaintiff a two hundred sixty-two page response to the verification request, On January 22, 2010, defendant paid \$8,666.12 to plaintiff at the DRG calculated 2009 revised rate pursuant to the New York Workers' Compensation Schedule of Fees and timely denied the balance as it was in excess of the allowable DRG calculated amount. Defendant argues that, after receiving and accepting defendant's payment of \$8,666.12, plaintiff alleges that the actual demanded amount was \$10,020.46 as stated on its NF-5 Form and not the amount due of \$8,667.14 on the itemized bill received. Defendant argues that plaintiff's itemized bill is more accurate as to the correct billable calculations in effect at the time the bill was received.

In reply, plaintiff argues that plaintiff's bill was for the sum of \$10,020.46 and the defendant submitted a partial payment of \$8,666.12, leaving a balance due of \$1,354.12. Plaintiff submits that the defendant's Denial of Claim Form contains an incorrect "Amount of bill" and an incorrect "Amount in dispute" and was defective. Plaintiff asserts that a proper denial of claim must include the information called for in the prescribed denial of claim form. The "information called for" however must be correct and, in this case, the incorrect information could mislead the plaintiff into believing that the denial of claim was not for the plaintiff's bill.

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 thirty calendar days after the insurer receives proof of claim...." *See* 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 ten (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 65-3.5 (b); *New York Hospital Medical Center of Queens v. State Farm Mutual Automobile Insurance Company*, 293 A.D.2d 588, 741 N.Y.S.2d 86 (2d 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 A.D.3d 354, 780 N.Y.S.2d 161 (2d Dept. 2004); *New York and Presbyterian Hospital v. American Transit Insurance Co.*, 287 A.D.2d 699, 733 N.Y.S.2d 80 (2d Dept. 2001); *Hospital for Joint Diseases v. Elrac, Inc.*, 11 A.D.3d 432, 783 N.Y.S.2d 612 (2d 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.

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*.

Based upon the foregoing, the Court reaches the following conclusions:

Second Cause of Action - Mount Sinai/Craveiro

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 with respect to the second cause of action. The record before the Court raises questions of fact with respect to the issuance of the verification requests. Said questions of fact preclude plaintiff's and defendant's requests for summary judgment.

Third Cause of Action - St. Vincent's/Mannheim

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 with respect to the third cause of action. The record before the Court raises questions of fact with respect to the dispute over the actual amount billed and whether or not the correct amount was paid by defendant. Said questions of fact preclude plaintiff's and defendant's requests for summary judgment.

Accordingly, it is hereby

**ORDERED**, that the first cause of action by plaintiff, NYU-Hospital for Joint Diseases a/a/o George Jennings, is hereby withdrawn; and it is further

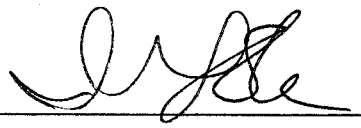
**ORDERED**, that the motions of plaintiff, Mount Sinai Hospital a/a/o Richard Craveiro, and defendant on the second cause of action and the motions of plaintiff, St. Vincent's Hospital & Medical Center a/a/o Susan Mannheim, and defendant on the third cause of action, pursuant to CPLR § 3212, for orders granting summary judgment are hereby denied; and it is further

**ORDERED**, that the parties shall appear for a Preliminary Conference on November 24, 2010, at 9:30 a.m. in the 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.

This constitutes the decision and order of this Court.

ENTER:



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

Dated: Mineola, New York  
October 25, 2010

**ENTERED**  
NOV 01 2010  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE