

**New York Hosp. Med. Ctr. of Queens v Country Wide
Ins. Co.**

2010 NY Slip Op 33275(U)

November 15, 2010

Supreme Court, Nassau County

Docket Number: 011656/10

Judge: Daniel R. Palmieri

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

ENTERED IN COMPUTER *Scm 100*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present:

HON. DANIEL PALMIERI
Acting Justice Supreme Court

-----x

THE NEW YORK HOSPITAL MEDICAL CENTER
OF QUEENS, a/a/o KHAIZRAN AGHA; MARY
IMMACULATE HOSPITAL - CARITAS HEALTH
CARE, a/a/o RAFAEL ALVARENGA; THE NEW
YORK AND PRESBYTERIAN HOSPITAL, a/a/o
JINYONG KIM,

Plaintiffs,

-against-

COUNTRY WIDE INSURANCE COMPANY,

Defendant.
-----x

TRIAL TERM PART: 45

INDEX NO.: 011656/10

MOTION DATE: 9-22-10
SUBMIT DATE: 11-1-10
SEQ. NUMBER - 001

MOTION DATE: 10-20-10
SUBMIT DATE: 11-1-10
SEQ. NUMBER - 002

The following papers have been read on this motion:

- Notice of Motion, dated 8-23-10.....1
- Notice of Cross Motion, dated 10-12-10.....2
- Reply and Opposition to Cross Motion, dated 10-18-10.....3

This motion by the plaintiffs pursuant to CPLR 3212 for summary judgment on their claims for payment of first-party No-Fault benefits is granted on the first cause of action, denied as to the second cause of action, and granted on the third cause of action. The cross motion by the defendant pursuant to CPLR 3212 for summary judgment dismissing the complaint is denied.

At the outset, the Court rejects the principal objection made by the defendant that the affidavits and billing information presented by each of the three hospital plaintiffs are insufficient as proof because the affiants are not employees of the hospitals, but rather are employees of another corporation, Hospital Receivables Systems, Inc. (“HRS”). Defendant asserts, in effect, that this is fatal to the plaintiffs’ claims, because employees of HRS are not competent to establish plaintiffs’ billing and claims-mailing procedures.

Individual employees of plaintiffs’ agent HRS, in possession of hospital billing records, state on personal knowledge of each assignor patient’s accounts that bills were prepared in the regular course of the hospital’s business, and that it was in the regular course of the hospital’s business to do so, in order to satisfy the business records exception to the hearsay rule.. These agents also state that each has knowledge of HRS’s own mailing procedures and that they were followed in these cases, as set them forth in their affidavits. The foregoing evidence of No-Fault billing has been accepted by our appellate courts as sufficient to trigger the obligation on the part of the No-Fault carrier to act on the claim within the time periods prescribed in the applicable Insurance Department regulations. *See, Hospital For Joint Diseases v Travelers Prop. Cas. Ins. Co.*, 9 NY3d 312, 316 (2007) [hospital bills through HRS; summary judgment for hospital affirmed]; *New York & Presbyt. Hosp. v Government Empls. Ins. Co.*, 17 AD3d 424, 426 (2d Dept. 2005) [affidavit of billing agent for hospital sufficient to defeat summary judgment for insurer on issue of claims verification and billing procedures].¹

¹ The Court notes that in the Appellate Division decision the affiant happened to be Peter Kattis, an affiant in the present matter.

Accordingly, the Court finds that the plaintiffs have presented *prima facie* proof that in each of the three billings involved a bill on the proper No-Fault form was mailed to the defendant, who failed to either pay or issue a denial of the claim within the prescribed 30-day time period. Insurance Law §5106(a); 11 NYCRR 65-3.8(a)(1).

With regard to the first claim (New York Hospital Medical Center of Queens, a/a/o Agha), defendant asserts that it never received the billing, and provides an affidavit from a No-Fault Claims supervisor describing the claims-handling procedure once there is receipt of a mailed claim. However, this cannot overcome the return receipt presented by HRS, which bears the Post Office number for this claim, a faint but visible stamp from defendant (“Countrywide Management Services”) and a signature. In view of this proof, a simple denial is inadequate to create an issue of fact regarding receipt. Accordingly, summary judgment is granted to this plaintiff on the first cause of action in the amount of \$6,229.38, with statutory interest (Insurance Law § 5106[a]) and attorney’s fees (*see* 11 NYCRR § 65-4.6[e]), as it is undisputed that the claim was never paid or denied.

The second cause of action (Mary Immaculate Hospital - Caritas Health Care, a/a/o Alvarenga) is based on a billing that occurred on October 10, 2008. The motion is defended by an assertion that on October 23, 2008 defendant issued a verification request to the plaintiff. The request for verification therefore tolled the 30-day period to pay or deny the claim until the records were received. 11 NYCRR 65-3.5(a),(b); 65-3.8; *see, New York & Presbyt. Hosp. v Progressive Cas. Ins. Co.*, 5 AD3d 568 (2d Dept. 2004).

This request sought the hospital record, the letter identifying the administrator of the

claimant's estate, and an assignment of benefits form signed by the administrator. On November 22, 2008 another such request was made. Defendant claims that it received the letter identifying the administrator, but not the assignment of benefits form. No mention is made of the hospital record. Defendant thus claims that because it never received the assignment it was under no obligation to issue a denial or to pay the claim.

In reply, the plaintiff has demonstrated that the hospital records were provided, but the only response to the contention that no assignment was provided is the statement of plaintiff's counsel. Although a copy of a signed assignment (dated August 14, 2008) is annexed to counsel's affirmation, there is no proof of mailing other than counsel's statement that "the defendant received a signed assignment with the hospital bill on October 16, 2008". There is no comparable statement from the HRS affiant, Rebecca Dahl, who provided the initial proof on this claim. Although this initial proof included a copy of an assignment, there is no direct statement from Dahl that this form was included with the original billing. In a reply by an HRS secretary, only the mailing of the hospital record is described, which is apparently not in dispute. Without dispositive proof that the assignment was mailed, the defendant's claim that it never received this statement creates an issue of fact as to whether the verifications sought by defendant were fully met, precluding summary judgment on this claim. Accordingly, summary judgment is denied as to the second cause of action.

The final cause of action is asserted on behalf of the New York and Presbyterian Hospital, a/a/o Jinyong Kim. In response to proof of mailing the bill and attachments on May 19, 2009 sworn to by one Pat Thompson, an HRS Biller and Account Representative,

defendant's affiant states that a verification request was mailed to the plaintiff on June 12, 2009 (the affidavit states 2008, but this is clearly inadvertent), asking for "the complete NF-2 on the revised form, completed by the claimant, the complete NF-5 on the revised form, signed by a hospital representative, and the assignment of benefits on the revised form, signed no stamps or initials."

In reply, Thompson states that HRS complied with the verification request for a completed NF-5 and signed assignment of benefits on January 22, 2010. Copies are annexed to this statement. As no authority is presented by the defendant in support of its position that some form other than the NF-5 must be supplied upon demand, the Court finds that the proof of plaintiff's timely response to the request for verification is dispositive of this claim in plaintiff's favor.² See, *Westchester Med. Ctr. v Lincoln Gen. Ins. Co.*, 60 AD3d 1045, 1046 (2d Dept. 2009). Accordingly, summary judgment is granted to the plaintiff on the third cause of action in the amount of \$1,932.98, with statutory interest (Insurance Law § 5106[a]) and attorney's fees (see 11 NYCRR § 65-4.6[e]).

In view of the foregoing determinations, the defendant's cross motion is denied in its entirety.

This shall constitute the Decision and Order of this Court.

DATED: November 15, 2010

ENTER

ENTERED



NOV 22 2010

HON. DANIEL PALMIERI
Acting Supreme Court Justice

NASSAU COUNTY
COUNTY CLERK'S OFFICE

² The Court also notes the absence of contrary proof by defendant in reply, which could have been submitted in support of its cross motion.

TO: Joseph Henig, P.C.
By: Marc Henig, Esq.
Attorney for Plaintiffs
1598 Bellmore Avenue
P.O. Box 1144
Bellmore, NY 11710

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