

**St. Vincent's Hosp. & Med. Ctr. v Country Wide Ins.
Co.**

2010 NY Slip Op 33631(U)

December 28, 2010

Supreme Court, Nassau County

Docket Number: 011841/09

Judge: Randy Sue Marber

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
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

JUSTICE

TRIAL/IAS PART 20

X

ST. VINCENT'S HOSPITAL & MEDICAL
CENTER, a/a/o PETER HOLMES;
ST. BARNABAS HOSPITAL,
a/a/o ANTONIETA GONZALEZ

Index No.: 011841/09
Motion Sequence...01, 02
Motion Date...10/25/10

Plaintiffs,

XXX

-against-

COUNTRY WIDE INSURANCE COMPANY,

Defendant.

X

Papers Submitted:

- Notice of Motion.....X
- Notice of Cross-motion.....X
- Reply and Opposition.....X

Upon the foregoing papers, the Plaintiffs' motion for an order pursuant to CPLR § 3212, granting it summary judgment, and the Defendant's Cross-motion for summary judgment are determined as hereinafter provided.

This is an action to recover no-fault benefits on two separate hospital no-fault billings. The First Cause of Action is brought due the alleged non-payment of no-fault benefits by the Defendant, COUNTRY WIDE INSURANCE COMPANY("COUNTRY

WIDE”) for services rendered to the Plaintiff’s assignor, PETER HOLMES (hereinafter “HOLMES”) during the period April 22, 2009 through April 24, 2009 arising out of an automobile accident on April 22, 2009. The Plaintiff, ST. VINCENT’S HOSPITAL & MEDICAL CENTER, is the assignee for the health services rendered to the assignor, HOLMES.

On May 7, 2009, the Plaintiff alleges that it billed the Defendant, COUNTRY WIDE utilizing a Hospital Facility Form (Form NF-5) and a UB-04 and a DRG Master Output Report, seeking payment of a hospital bill in the sum of \$12,274.32. The billing was sent via certified mail, return receipt requested, and was received by the Defendant on May 12, 2009.

The Plaintiff alleges that the Defendant failed to either pay the hospital bill or to issue a Denial of Claim within the required thirty (30) time period pursuant to Insurance Law § 5106 [a].

In opposition to the Plaintiff’s motion for summary judgment regarding the First Cause of Action, the Defendant, COUNTRY WIDE, claims that the Plaintiff failed to submit outstanding responses to its verification request sent to the Plaintiff on May 27, 2009 seeking the complete NF-2, the complete NF-5, the complete x-ray report, and the complete hospital record, including all testing reports and notes. The Defendant claims it sent a second verification request to the Plaintiff, dated June 26, 2009, when it did not receive a response to its first verification request. The Defendant claims that, to date, it has not received the

requested documentation and as such it is not required to issue a denial of claim. The Defendant claims that the First Cause of Action is premature and should be dismissed.

Additionally, the Defendant claims that the Plaintiff's motion for summary judgment should be denied as the affidavits submitted in support of its motion are not sufficient to establish their prima facie entitlement to summary judgment. Specifically, the Defendant alleges that the affidavits are from people who do not have personal knowledge of the facts related to the method of mailing the bills to the insurance company. The Defendant alleges the affidavits do not satisfy the requirement that proof be submitted in admissible form that the provider is entitled to summary judgment based on complying with the dictates of the Insurance Law and the no-fault regulations.

In reply and in opposition to the Defendant's Cross-motion, the Plaintiff claims to have mailed the complete medical records to the Defendant on June 30, 2009 for which it has a return receipt for its delivery. The Affidavit of Sharon Shafi, sworn to on November 27, 2009, is attached to the Plaintiff's Reply which states that she personally mailed the records to the Defendant on June 30, 2009 by certified mail. A return receipt indicates that it was received by the Defendant on July 1, 2009. The Plaintiff's counsel does not address the issue of the sufficiency of the supporting affidavits in his Reply.

The Second Cause of Action is brought due the alleged non-payment of no-fault benefits by the Defendant, COUNTRY WIDE for services rendered to the Plaintiff, ST. BARNABAS HOSPITAL's assignor, ANTONIETA GONZALEZ (hereinafter

“GONZALEZ”) during the period February 27, 2009 through March 1, 2009 arising out of an automobile accident on February 27, 2009. The Plaintiff, ST. BARNABAS HOSPITAL, is the assignee for the health services rendered to the assignor, GONZALEZ.

On May 4, 2009, the Plaintiff alleges that it billed the Defendant, COUNTRY WIDE utilizing a Hospital Facility Form (Form NF-5) and a UB-04 and a DRG Master Output Report, seeking payment of a hospital bill in the sum of \$4,078.33. The billing was sent via certified mail, return receipt requested, and was received by the Defendant on May 6, 2009.

The Plaintiff alleges that the Defendant failed to either pay the hospital bill or to issue a Denial of Claim within the required thirty (30) time period pursuant to Insurance Law § 5106 [a].

The Defendant alleges that the Plaintiff failed to timely submit its proof of claim with the insurance company and, in fact, issued a denial of claim. The Defendant points to the Plaintiff’s proof submitted in support of its motion as evidence that the Plaintiff failed to timely file a proof of claim within 45 days of the rendering of the services.

Attached to the Defendant’s cross-motion and opposition to the Plaintiff’s motion for summary judgment is the affidavit of Eric Lyons, sworn to on August 27, 2009, in which he states that “On May 6, 2009, Country Wide Insurance Company received a bill in the amount of \$9,732.85 for services allegedly rendered to Antonieta Gonzalez by plaintiff St. Barnabas Hospital between February 27, 2009 and March 1, 2009. Country-Wide

Insurance Company timely issued a denial on May 19, 2009”.

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 (*Sillman v. Twentieth Century Fox*, 3 N.Y.2d 395 [1957]; *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 [1986]; *Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]; *Bhatti v. Roche*, 140 A.D.2d 660 [2d Dept. 1998]). 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 (*Friends of Animals, Inc. v. Associated Fur Mfrs., Inc.*, 46 N.Y.2d 1065 [1979]). Such evidence may include deposition transcripts, as well as other proof annexed to an attorney’s affirmation (CPLR § 3212 [b]; *Olan v. Farrell Lines*, 64 N.Y.2d 1092 [1985]).

The Plaintiff has established a “*prima facie* showing that it is entitled to judgment as a matter of law on its complaint to recover no-fault medical payments on the First and Second Causes of Action by submitting evidence that the prescribed statutory billing forms had been mailed and received, and that the Defendant failed to either pay or deny the claim within the requisite 30-day period.” *Westchester Medical Center v. Lincoln General Ins. Co.*, 60 A.D.3d 1045 (2d Dept. 2009); *see* Insurance Law § 5106 [a]; 11 NYCRR 65-3.5; *Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co.*, 9 N.Y.2d 312 (2007); *New York & Presbyt. Hosp. v. Allstate Ins. Co.*, 31 A.D.3d 512 (2d Dept. 2006);

Nyack Hosp. v. General Motors Acceptance Corp., 27 A.D.3d 96 (2d Dept. 2005); *New York & Presbyt. Hosp. v. AIU Ins. Co.*, 20 A.D.3d 515 (2d Dept. 2005); *New York & Presbyt. Hosp. v. Progressive Cas. Ins. Co.*, 5 A.D.3d 568 (2d Dept. 2004). The Defendant's claim that the affidavit submitted in support of the Plaintiff's motion is inadmissible is without merit. The affidavit of Peter Kattis clearly states that he has personal knowledge of the facts as he billed the Defendant.

Accordingly, the Plaintiff's motion seeking summary judgment on the First Cause of Action is **GRANTED**. The hospital is therefore entitled to summary judgment on the First Cause of Action and, also, statutory interest and attorney's fees. *Nyack Hosp. v. Encompass Ins. Co.*, *supra*.

With regard to the Plaintiff's Second Cause of Action, the Defendant failed to submit proper proof of the service of the Denial of Claim that was purportedly mailed on May 19, 2009. The affidavit of Mr. Lyons merely states that he is the No-Fault Litigation Supervisor and is fully aware of the procedures regarding no-fault claims. He states that based on the files and computer records, the Defendant timely issued a denial. There is no attestation that Mr. Lyons, or any other specific representative of Country Wide, mailed the Denial of Claim.

Accordingly, on this record, the Defendant has failed to raise a triable issue of fact sufficient to defeat the summary judgment motion regarding the Second Cause of Action. As such, the Plaintiff's motion for summary judgment on the Second Cause of


Action is **GRANTED**. The hospital is therefore entitled to summary judgment on the Second Cause of Action and, also, statutory interest and attorney's fees. *Nyack Hosp. v Encompass Ins. Co., supra.*

The Defendant's Cross-motion is **DENIED**.

This constitutes the decision and order of this court.

Submit Judgment on Notice.

DATED: Mineola, New York
December 28, 2010



Hon. Randy Sue Marber, J.S.C.
XXX

ENTERED
JAN 05 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE