Westchester Med. Ctr. v Government Empls. Ins. Co.
2011 NY Slip Op 30862(U)
March 28, 2011
Supreme Court, Nassau County
Docket Number: 18162/10
Judge: Karen V. Murphy

Short Form Order

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SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 15 NASSAU COUNTY

PRESENT:

Honorable Karen V. Murphy
Justice of the Supreme Court

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WESTCHESTER MEDICAL CENTER,
a/a/o SALVATORE DIPIETRO,

Plaintiff(s),

-against-

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Defendant(s).

x

Index No. 18162/10

Motion Submitted: 1/18/11
Motion Sequence: 001

The following papers read on this motion:

Notice of Motion/Order to Show Cause.....X
Answering Papers.....X
Reply.....X
Briefs: Plaintiff's/Petitioner's.....
Defendant's/Respondent's.....

Plaintiff, Westchester Medical Center, a/a/o Salvatore DiPietro ("WMC") moves this Court for an Order granting it summary judgment against defendant for failure to pay a no-fault medical billing arising from a motor vehicle accident involving Salvatore DiPietro. Defendant opposes plaintiff's motion.

WMC is seeking payment from defendant for medical services rendered during the period from June 13, 2010 through July 21, 2010. The amount of the claim submitted to defendant was $147,370.24, although WMC requests summary judgment in the amount of $55,000, which represents the limits of the insurance policy, together with statutory interest

and attorney's fees pursuant to 11 N.Y.C.R.R. 65-4.6 (e).[1] It is undisputed that the claim has not been paid, or denied, by defendant.

This Court recognizes that summary judgment is a drastic remedy and as such should only be granted in the limited circumstances where there are no triable issues of fact. (***Andre v. Pomeroy,*** 35 N.Y.2d 361, 320 N.E.2d 853, 362 N.Y.S.2d 131 [1974]). Summary judgment should only be granted where the court finds as a matter of law that there is no genuine issue as to any material fact. (***Cauthers v. Brite Ideas, LLC,*** 41 A.D.3d 755, 837 N.Y.S.2d 594 [2d Dept., 2007]). The Court's analysis of the evidence must be viewed in the light most favorable to the non-moving party, herein the defendant. (***Makaj v. Metropolitan Transportation Authority***, 18 A.D.3d 625, 796 N.Y.S.2d 621 [2d Dept., 2005]).

"A no-fault claim is overdue if it is not paid or denied within thirty [30] days of receipt (see ***Insurance Law § 5106 [a]; 11 N.Y.C.R.R. 65-3.8 [a][1] & [c]***) unless, within fifteen [15] business days of receipt of the claim, the insurer requests additional verification (see ***11 N.Y.C.R.R. 65-3.8 [b][3]***)" (***A.B. Medical Services PLLC a/a/o David Ruiz v. GEICO General Insurance Company***, 22 Misc.3d 1116A, 880 N.Y.S.2d 222 [Dist. Ct., Nassau County 2008]).

Furthermore, where the medical provider movant establishes that it mailed the necessary billing documents to the defendant insurer, that the defendant insurer received them, and that the payment of no-fault benefits is overdue, the medical provider is generally entitled to summary judgment as a matter of law (***New York Hospital Medical Center of Queens v. Country Wide Insurance Company***, 2011 N.Y. Slip Op. 01628, 917 N.Y.S.2d 322 [2d Dept., 2011]).

In support of the instant motion, the affidavit of plaintiff's third-party Biller and Account Representative (Pat Thompson) establishes that plaintiff billed defendant on August 4, 2010, including a hospital bill, a form UB-04 and a DRG Master Output Report, and that defendant received the billing information on August 5, 2010. The Thompson affidavit also establishes that defendant has failed to either pay the bill, or to issue a denial of claim form. Plaintiff has also included the signed, certified mail return-receipt card evidencing defendant's receipt of the patient's documents on August 5, 2010, at defendant's Woodbury, New York office. Thus, this Court finds that the no-fault claim is overdue, and that plaintiff is entitled to summary judgment as a matter of law.

In opposition thereto, defendant has raised a triable issue of fact. Through its employee, Eileen Kinney, defendant admits that it received plaintiff's billing documents on

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[1]Plaintiff is apparently not disputing the affidavit of Robin Lubow, defendant's underwriter, with respect to establishing the policy's limit of $55,000.

August 5, 2010. It is further undisputed that, on August 12, 2010, defendant sent a written verification request to plaintiff, and that, on August 16, 2010, plaintiff complied with defendant's request for the patient's hospital records. The WMC hospital records requested by defendant were received at defendant's office on August 19, 2010.

Defendant next states that, on September 13, 2010, it sent an additional verification request to plaintiff, claiming in its opposition papers that "the complete records have not been received" because the patient "first presented on an emergency basis to Lawrence Hospital Center after this motor vehicle accident . . . ." Defendant's Exhibit D, which is the "second request" for verification, is an exact duplicate of the verification request dated August 12, 2010, but for the notation "SECOND REQUEST". Plaintiff, rather than contacting Defendant to indicate that Defendant signed for the records on August 19th or that they were not in possession of the ER records, nor that those records could not be obtained by Plaintiff through reasonable effort, simply ignored that request, the receipt of which was not denied. The Court notes that a "cc" of the second request was sent to WMC at a Valhalla address, and to the patient.[2]

Defendant also sent a written request for hospital records to Lawrence Hospital Center at "P.O. Box 350, Plainview, New York." This request is dated August 4, 2010. According to defendant, it did not receive either a response, or the records, from Lawrence Hospital Center. Defendant sent to Lawrence Hospital Center a "second request" for the hospital records dated September 8, 2010. Apparently, neither a response, nor the records were forthcoming from that hospital. This second request was also sent to the Plainview post office box, and a "cc" was sent to the patient and to Lawrence Hospital Center at its physical address in Bronxville, New York. There is no indication that WMC was sent a copy of either letter addressed to Lawrence Hospital Center.

Proof of a claim is not complete until the insurer has received the records of a health care provider who rendered treatment that preceded that of the Plaintiff. (***Westchester Medical Center v. Progressive Casualty Ins. Co.***, 19 Misc.3d 1113(A), 859 N.Y.S.2d 907 (Sup. Ct., Nassau Co., 2/28/2008); *see also*, ***Westchester Medical Center v. Progressive Casualty Ins. Co.,*** 51A.D.3d 1014, 858 N.Y.S.2d 754 [2d Dept., 2008]).

Defendant's reliance on ***Westchester Medical Center, a/a/o Fuchs v. Mercury Casualty Company*** (22 Misc.3d 233, 871 N.Y.S.2d 816 [Sup. Ct., Nassau County 2008]) is

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[2]The WMC medical records attached to plaintiff's reply indicate that the patient was discharged from WMC to a sub-acute care facility, in a "coma state . . . [with] occasional eye movements, but does not respond to any tactile or verbal stimulus or commands" (Discharge Summary, p. 2). The Court wonders how the patient's signature came to be "ON FILE" with WMC, as noted on the NF-5

appropriate. In that case, the insurer requested consent to obtain a blood sample, the sample itself, as well as an application for benefits directly from the plaintiff hospital and the insured. Here, defendant specifically requested the ER, or Emergency Room Records from WMC and Salvatore DiPietro, as well as Lawrence Hospital Center. While neither the first or second request to WMC and DiPietro was a model of clarity, WMC's own records reveal that DiPietro was transferred from Lincoln, where he was treated in the ER. (*See also* ***Westchester Medical Center v. Progressive Casualty Ins. Co.***, 19 Misc.3d 1113(A), 859 N.Y.S.2d 907 [Sup. Ct., Nassau Co., 2/28/2008]). Plaintiff's failure to provide the ER records rendered the claim incomplete.

It is well settled that "[t]he insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested" (11 N.Y.C.R.R. 65-3.5 [c]), and to date none of the parties to whom such timely verification requests were made have provided the necessary information, thus, Defendant's time to pay or deny the claim is therefore tolled. (***St. Vincent Medical Care, PC v. Country Wide Ins. Co.,*** 80 A.D.3d 599, 914 N.Y.S.2d 293 (2d Dept., 2011); ***New York and Presbyterian Hospital v. Country Wide Ins. Co.,*** 44 S.D.3d 729, 843 N.Y.S.2d 662, (2d Dept., 2007); ***Hospital for Joint Diseases v. Central Mutual Fire Ins. Co.,*** 44 A.D.3d 903, 844 N.Y.S. 371 [2d Dept., 2007]).

Accordingly, plaintiff's motion for summary judgment is denied and the complaint is dismissed, as premature.

The foregoing constitutes the Order of this Court.

Dated: March 28, 2011
Mineola, N.Y.

Karen V. Murphy
J. S. C.
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ENTERED

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NASSAU COUNTY
COUNTY CLERK'S OFFICE