

**Westchester Med. Ctr. v State Farm Mut. Auto. Ins.
Co.**

2011 NY Slip Op 31634(U)

June 6, 2011

Supreme Court, Nassau County

Docket Number: 022618-10

Judge: Steven M. Jaeger

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SHORT FORM ORDER
SUPREME COURT - STATE OF NEW YORK

Present:
HON. STEVEN M. JAEGER,
Acting Supreme Court Justice

WESTCHESTER MEDICAL CENTER, a/a/o
GAIL HELLER; MT. VERNON HOSPITAL,
a/a/o HENRY AEKINS; THE NEW YORK
HOSPITAL MEDICAL CENTER OF QUEENS,
a/a/o KENNETH L. PARKER,

Plaintiffs,

-against-

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant.

TRIAL/IAS, PART 43
NASSAU COUNTY
INDEX NO.: 022618-10

MOTION SUBMISSION
DATE: 4-5-11

MOTION SEQUENCE
NO. 1

The following papers read on this motion:

- | | |
|---|---|
| Notice of Motion, Affirmation, and Exhibits | X |
| Affirmation in Opposition and Exhibits | X |
| Reply Affirmation and Exhibits | X |

Plaintiff moves pursuant to CPLR §3212 for summary judgment based upon Defendant's failure to make payments in three separate no-fault billings pursuant to Insurance Law §5106(a).

In a motion for summary judgment the moving party bears the burden of making a prima facie showing that he or she is entitled to summary judgment as a matter of law, submitting sufficient evidence to demonstrate the absence of a material issue of fact. *Sillman v. Twentieth Century Fox Film Corp.*, 3 NY2D 395 (1957); *Friends of*

Animals, Inc. v. Associates Fur Mfrs., 46 NY2d 1065 (1979); *Zuckerman v. City of New York*, 49 NY2d 5557 (1980); *Alvarez V. Prospect Hospital*, 68 NY2d 320 (1986).

The failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers. *Winegard v. New York University Medical Center*, 64 NY2d 851 (1985). Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action. *Zuckerman v. City of New York, supra*. The primary purpose of a summary judgment motion is issue finding not issue determination, *Garcia v. J.C. Duggan, Inc.*, 180 AD2d 579 (1st Dept. 1992), and it should only be granted when there are no triable issues of fact. *Andre v. Pomeroy*, 35 NY2d 361 (1974).

FIRST CAUSE OF ACTION

Plaintiff, Westchester Medical Center (hereinafter "Westchester") is the assignee for medical services provided to Gail Heller (hereinafter "Heller") as the result of a one vehicle automobile accident on June 14, 2010 on Mineral Springs Road, Town of Woodbury, County of Orange, State of New York. On July 30, 2010 Westchester billed Defendant in the amount of \$16,828.50. Westchester alleges that Defendant has failed to render payment or deny the claim within thirty (30) days pursuant to Insurance Law §5106(a) and 11 NYCRR §65.15(g)(3). Defendant contends that payment was not issued because Westchester failed to respond to verification requests that toll the thirty (30) day period sent on August 17, 2010 and September 16, 2010 pursuant to 11 NYCRR 65.

The focus of Defendant's verification requests is information regarding Heller's alleged intoxication, including results of a blood-alcohol content test as Heller was cited for violating VTL §1192-3 in the police accident report dated June 16, 2010. By letter dated November 2, 2010, Hospital Receivables, Inc. advised Defendant that all lab reports from Westchester were mailed to Defendant on September 15, 2010 and indicated that Westchester did not conduct a blood-alcohol content test. However, a blood-alcohol content test was conducted by Plaintiff Westchester, with results of 0.18 being indicated in the June 24, 2010 toxicology report provided by the New York State Police.

As a result of Westchester not providing the results of the blood-alcohol content test, Defendant did not receive the report from the State Police until March 2, 2011, subsequent to the commencement of the instant matter. Westchester argues that Defendant fails to indicate when this information was requested from the police, and that in any event the police accident report triggered Defendant's obligation to request the report in June 2010.

However, the triggering event was when Westchester billed Defendant on July 30, 2010. *Presbyterian Hosp. in the City of New York v. Maryland Cas. Co.*, 90 NY2d 274 (1997). And the August 24, 2010 letter from the Nassau County Police Department to Defendant advising Defendant how to obtain the requested information indicates that the letter was sent in response to Defendant's letter of August 17, 2010, which is within the thirty (30) day period. Defendant then followed up with the Nassau County District Attorney by letter dated September 14, 2010. Considering that the

subject accident occurred in Orange County and not Nassau County, that may explain the delay in receiving the results. Defendant's verification requests were timely sent and tolled the thirty (30) day period until receipt of the requested information, which was not received until after commencement of the instant matter.

Westchester further argues that even if Defendant's verification requests were sent timely, Defendant has failed to prove that the accident was caused by Heller's intoxication. *Cernik v. Sentry Ins.*, 131 AD2d 952 (3rd Dept. 1987). Although at this stage of the litigation Defendant has not demonstrated that Heller's intoxication was the proximate cause of the accident, proof of which would result in a denial of Westchester's claim, that is a question of fact. *Lynch v. Progressive Ins. Co.*, 12 AD3d 570 (2nd Dept. 2004).

Accordingly, Westchester's motion for summary judgment is denied.

SECOND CAUSE OF ACTION

Plaintiff, Mt. Vernon Hospital (hereinafter "Mt. Vernon") is the assignee for medical services provided to Henry Aekins (hereinafter "Aekins") as the result of an automobile accident on December 31, 2009. On September 1, 2010 Mt. Vernon billed Defendant in the amount of \$5,787.20. Mt. Vernon alleges that Defendant has failed to render payment or deny the claim within thirty (30) days pursuant to Insurance Law §5106(a) and 11 NYCRR §65.15(g)(3). Defendant contends that payment was not made or a denial was not issued because Mt. Vernon failed to respond to verification requests that toll the thirty (30) day period sent on September 22, 2010 and October 27, 2010 pursuant to 11 NYCRR 65.

In support of the motion, Mt. Vernon has demonstrated a prima facie entitlement to summary judgment by submitting an affidavit of a billing supervisor for Hospital Receivables System, Inc. on behalf of Mt. Vernon in support of all the requisite documentary evidence. *Westchester Medical Center v. Countrywide Ins. Co.*, 45 AD3d 676 (2nd Dept. 2007); *New York Presbyterian Hosp. v. Travelers Property Cas. Ins. Co.*, 37 AD3d 683 (2nd Dept. 2007). In opposition Defendant has submitted affidavits from the claim representative handling the Aekins claim, a claim support services supervisor, and a mailroom services assistant to support that verification requests were mailed to Mt. Vernon. Mt. Vernon further submits an affidavit from a biller attesting that the verification requests were never received.

Mt. Vernon contends that the affidavit of the claim representative is insufficient to prove that the verification requests were properly addressed and mailed. Although that may be true, Defendant has submitted more than just the claim representative's affidavit. Defendant has submitted two additional affidavits as noted hereinabove, as well as copies of the verification requests containing Mt. Vernon's address. Viewing this evidence in conjunction with the bill submitted by Mt. Vernon which contains the same address for Mt. Vernon as the address listed on the copies of the verification requests, it is apparent that Defendant raised an issue of fact that it requested verification timely, thereby tolling the thirty (30) day period.

Accordingly, Mt. Vernon's motion for summary judgment is denied.

THIRD CAUSE OF ACTION

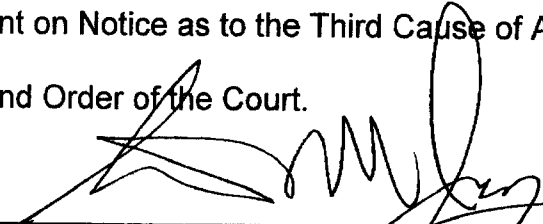
Plaintiff, The New York Hospital Medical Center of Queens (hereinafter "Queens") is the assignee for medical services provided to Kenneth L. Parker (hereinafter "Parker") as the result of a motorcycle accident on July 27, 2010. On September 17, 2010 Queens billed Defendant in the amount of \$7,576.44. On November 22, 2010 Defendant rendered payment in the amount of \$4,167.31, leaving a balance of \$3,409.13 that, as alleged by Queens, has neither been paid or denied within thirty (30) days pursuant to Insurance Law § 5106(a) and 11 NYCRR §65.15(g)(3). Defendant contends that at the time of the accident Parker was operating a motorcycle under a Michigan insurance policy issued to Robbin Lewis, a Michigan resident. As such, because Parker is neither the insured or a resident relative, the medical payment coverage limit under the policy is \$5,000, and therefore only \$861.27 remains on the policy for the subject loss (although the Court's calculation shows the balance to be \$832.69). Queens now seeks the remaining balance.

The parties agree that the balance of the policy is due and owing. As such, there are no questions of fact to be decided. Accordingly, Queens's motion for summary judgment is granted to the extent that Defendant owes \$832.69, the balance remaining on the policy for medical payment, to Plaintiff.

Plaintiff shall submit a Judgment on Notice as to the Third Cause of Action.

This constitutes the Decision and Order of the Court.

Dated: June 6, 2011



STEVEN M. JAEGER, A.J.S.C.

ENTERED
JUN 09 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE