

Westchester Med. Ctr. v Government Empls. Ins. Co.
2011 NY Slip Op 31856(U)
June 27, 2011
Supreme Court, Nassau County
Docket Number: 16751/2010
Judge: Joel K. Asarch
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: PART 17

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WESTCHESTER MEDICAL CENTER,
a/a/o CHRIS MCCLELLAN;
THE NEW YORK HOSPITAL MEDICAL CENTER
OF QUEENS, a/a/o OIYI LEE;
THE NEW YORK AND PRESBYTERIAN HOSPITAL,
a/a/o JERRY BIANCHINI,

INDEX NO. 16751/2010

DECISION AND ORDER

Plaintiffs,

Original Return Date:02-11-11
Motion Sequence Number: 001

against -

GOVERNMENT EMPLOYEES INSURANCE
COMPANY,

Defendant.
-----X

P R E S E N T :

HON. JOEL K. ASARCH,
Justice of the Supreme Court.

The following named papers numbered 1 to 9 were submitted on this Notice of Motion on April 13, 2011:

	<u>Papers numbered</u>
Notice of Motion, Affirmation and Affidavits (3)	1-5
Affirmation and Affidavit in Opposition	6-7
Reply Affirmation and Affidavit	8-9

The motion for summary judgment pursuant to CPLR 3212 by the plaintiffs, Westchester Medical Center, the New York Hospital Medical Center of Queens and the New York and Presbyterian Hospital, as assignees of various insureds, i.e., Chris McClellan, Oiyi Lee and Jerry Bianchini respectively, is determined as hereinafter provided.

In this action brought pursuant to Insurance Law § 5106(a), plaintiff hospital assignees seek to recover monies due and owing for health services rendered to assignors Chris McClellan, Oiyi Lee

and Jerry Bianchini¹ as a result of injuries they sustained in three unrelated motor vehicle accidents.

Westchester Medical Center - First Cause of Action

Chris McClellan was treated at Westchester Medical Center from April 11, 2010 through April 12, 2010 for injuries he allegedly sustained on April 11, 2010. A no-fault bill in the sum of \$14,131.99 was sent to defendant Government Employees Insurance Company (GEICO) on April 27, 2010, by certified mail, return receipt requested, and was received on April 28, 2010. The amount billed allegedly remains partially unpaid, as a result of which assignee Westchester Medical Center claims entitlement to summary judgment in the sum of \$9,571.19 plus statutory no-fault interest and attorneys' fees.

New York Hospital Medical Center Queens - Second Cause of Action

Oiyi Lee was treated at New York Hospital Medical Center of Queens on June 17, 2010 following a motor vehicle accident on June 7, 2010. A no-fault bill in the sum of \$5,572.40 was mailed to defendant GEICO on July 9, 2010, by certified mail, return receipt requested, and received by said defendant on July 12, 2010. The bill remains unpaid, having become overdue as of August 12, 2010.

ANALYSIS

Insurance Law § 5106(a) provides that “[w]ithin 30 calendar days after proof of claim is received, the insurer shall either pay or deny the claim in whole or in part.”² 11 NYCRR 65-3.8.[c].

¹The claim asserted in the third cause of action regarding assignor Jerry Bianchini has been withdrawn.

²Insurer’s failure to pay or deny a claim within 30 days carries substantial consequences as overdue payments earn monthly interest at a rate of two percent and entitle a claimant to reasonable attorneys’ fees incurred in securing payment of a valid claim. *Hospital for Joint Disease v Travelers Property Cas. Ins. Co.*, 9 NY3d 312, 318 [2007].

This 30-day period may, however, be extended if, within 15 days of receipt of a claim, an insurer demands additional verification of the claim. 11 NYCRR 65.-3.5[b]; *Infinity Health Products, Ltd. v Eveready Ins. Co.*, 67 AD3d 862, 864 [2nd Dept 2009]; *Hospital for Joint Diseases v New York Central Mutual Fire Ins. Co.*, 44 AD3d 903, 904 [2nd Dept 2007].

If the demanded verification is not received within 30 days, the insurance company must issue a follow-up request within 10 days of the insured's failure to respond. 11 NYCRR former 65.15[e][2]; *Mount Sinai Hosp. v Chubb Group of Ins. Companies*, 43 AD3d 889 [2nd Dept 2007]. A claim need not be paid or denied until all demanded verification is provided. 11 NYCRR 65-3.5[c], 65-3.8[a][1]; *St. Vincent's Medical Care, P.C. v Country Wide Ins. Co.*, 80 AD3d 599, 600 [2nd Dept 2011]; *New York & Presbyterian Hospital v Progressive Cas. Ins. Co.*, 5 AD3d 568, 570 [2nd Dept 2004]; *Westchester County Medical Cent. v New York Cent. Mut. Fire Ins. Co.*, 262 AD2d 553, 554 [2nd Dept 1999].

If an insurer has reason to believe that the claimant was operating a motor vehicle while intoxicated, and such intoxication was a contributing cause of the accident in which he was injured, the insurer is entitled to all available information which was properly requested. 11 NYCRR 65-3.8[g]; *Westchester Medical Center v Progressive Cas. Ins. Co.*, 51 AD3d 1012, 1014 [2nd Dept 2008].

According to defendant GEICO's submissions, after receiving the no-fault billing for treatment rendered to Chris McClellan (first cause of action) on April 29, 2010, by letter dated May 17, 2010, GEICO requested additional verification, i.e., a copy of test results and/or technical data including the BAC %. The letter also advised plaintiff Westchester Medical Center that if no BAC/ETOH test was performed on Chris McClellan, an affirmed statement from the attending

[* 4]

physician on hospital letterhead explaining why the alcohol or toxicology screen was not performed was required.³ Thereafter, on May 25, 2010, plaintiff Westchester Medical Center provided further information (hospital lab report), to defendant GEICO in response to the insurer's verification request. By letter dated June 23, 2010, defendant GEICO sent a follow-up (second) request for the same information it had requested in its May 17, 2010 letter but had not yet received. By letter dated June 24, 2010, plaintiff Westchester Medical Center advised GEICO that a BAC test was not performed and

“the attending physician and the plaintiff facility are not required to supply any other information on the subject matter.”

On July 9, 2010 and July 26, 2010, defendant GEICO again requested that plaintiff Westchester Medical Center submit

“a signed or affirmed statement on hospital letterhead from the attending physician explaining why [an] alcohol or toxicology screen was not ordered or performed for this patient.”

Ultimately, on October 19, 2010, defendant GEICO received a letter from the Chairman of Emergency Services at Westchester Medical Center affirming that a BAC/ETOH screen was not conducted on Chris McClellan during his emergency department visit on April 11, 2010 “because it was not clinically indicated or necessary for treatment.” On November 11, 2010, payment in the amount of \$9,571.19 was sent by GEICO to plaintiff Westchester Medical Center.

Based on the foregoing facts, plaintiff's motion for summary judgment against defendant GEICO on the first cause of action of the complaint is denied.

While defendant GEICO attests that it has no record of receiving plaintiff the New York

³A portion of the policy amount (MED Pay) in the sum of \$4,560.80, plus a state surcharge of \$439.21, was paid by defendant GEICO on May 26, 2010.

Hospital Medical Center's request for payment *vis-a-vis* health services provided to Oiyi Lee (second cause of action), plaintiff assignee has made a *prima facie* showing of its entitlement to judgment as a matter of law by submitting the affidavit of the hospital biller and account representative attesting that the prescribed billing forms were mailed and received and signed for by defendant GEICO on July 12, 2012 and that payment of no-fault benefits was overdue. Insurance Law § 5106[a]; *Westchester Medical Center v GMAC Ins. Co. Online, Inc.*, 80 AD3d 603, 604 [2nd Dept 2011]; *NYU-Hospital for Joint Diseases v Esurance Ins. Co.*, 2011 WL 2089719, 2011 N.Y. Slip Op 04436 [N.Y.A.D. 2nd Dept May 24, 2011]. The affidavit provided, together with the postal receipts annexed to plaintiffs' moving papers, constitute proof of actual mailing entitling plaintiff New York Hospital Medical Center to the presumption that item was received. *New York and Presbyterian Hosp. v Countrywide Ins. Co.*, 44 AD3d 729, 730 [2nd Dept 2007].

The proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact. *Ferluckaj v Goldman Sachs & Co.*, 12 NY3d 316, 320 [2009]. Once such a showing has been made, the burden shifts to the opposing party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require resolution after trial. *Moore v 3 Phase Equestrian Center, Inc.*, 83 AD3d 677 [2nd Dept. 2011].

The defendant GEICO having failed to submit evidentiary proof raising a factual issue as to plaintiff's entitlement to summary judgment on the second cause of action, plaintiff the New York Hospital Medical Center of Queens' motion for summary judgment on the second cause of action is granted.

Accordingly, after due deliberation, it is

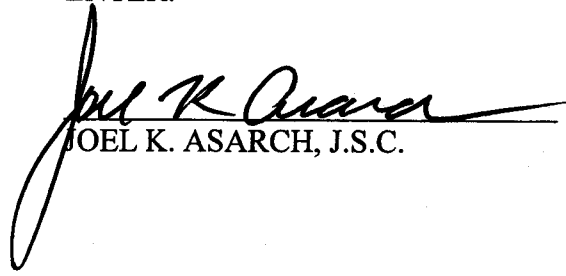
ORDERED, that the motion by the plaintiff The New York Hospital Medical Center of Queens as assignee of Oiyi Lee for an Order pursuant to C.P.L.R. 3212 granting summary judgment relief as against the defendant, Government Employees Insurance Company, is **granted** in the sum of \$5,572.40, plus statutory no-fault interest from August 12, 2010, and attorneys' fees pursuant to 11 NYCRR 65-4.6(e); and it is further

ORDERED, that the motion is in all other respects **denied**.

The foregoing constitutes the Decision and Order of the Court.

Dated: Mineola, New York
June 27, 2011

ENTER:


JOEL K. ASARCH, J.S.C.

Copies mailed to:
Joseph Henig, P.C.
Attorney for Plaintiff

Law Offices of Teresa M. Spina, Esq.
Attorney for Defendant

NASSAU INDEX # _____
FILED
JUN 29 2011
COUNTY CLERK OF
NASSAU COUNTY