

New York Hosp. Med. Ctr. of Queens v Country Wide Ins. Co.
2011 NY Slip Op 32415(U)
September 12, 2011
Sup Ct, Nassau County
Docket Number: 5560/11
Judge: Joel K. Asarch
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: I.A. PART 17

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NEW YORK HOSPITAL MEDICAL CENTER OF
QUEENS, a/a/o OLGA JARA; NYU-HOSPITAL
FOR JOINT DISEASES, a/a/o IDALIA GONZALEZ,

Plaintiffs,

- against -

DECISION AND ORDER

Index No: 5560/11

COUNTRY WIDE INSURANCE COMPANY,

Defendant.

Motion Sequence Nos: 001 and 002
Original Return Date: 07-07-11

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P R E S E N T :
HON. JOEL K. ASARCH,
Justice of the Supreme Court.

The following named papers numbered 1 to 10 were submitted on this Notice of Motion on July 7, 2011:

	<u>Papers numbered</u>
Notice of Motion, Affirmation and Affidavits (2)	1-4
Notice of Cross Motion, Affirmation and Affidavit	5-7
Reply Affirmation and Affidavits (2)	8-10

This motion by the plaintiffs, New York Hospital Medical Center of Queens a/a/o Olga Jara (“New York Hospital”) and NYU-Hospital For Joint Diseases a/a/o Idalia Gonzalez (“NYU-Hospital”), for an order pursuant to CPLR 3212 granting them summary judgment is granted as provided herein.

This cross-motion by the defendant, Country Wide Insurance Company, for an order pursuant to CPLR 3211(a)(7) and 3212 granting it summary judgment dismissing the complaint is denied.

In this action pursuant to Insurance Law §5106, the plaintiff hospitals seek payment of no-

fault benefits and to recover for medical services allegedly provided to their assigneds for injuries sustained in motor vehicle accidents. An insurer is required to pay or deny a claim for no-fault benefits within 30 days after the claimant provides proof of the claim. Insurance Law § 5106(a); 11 NYCRR 65-3.8(a)(1); Presbyterian Hosp. in the City of New York v Maryland Cas. Co., 90 NY2d 274, 278 (1997), rearg den. 90 NY2d 937 (1997). Its failure to do so precludes it from raising most defenses to the claim. Presbyterian Hosp. in the City of New York, supra, at p. 282. However, an insurer may extend the 30 day period in which it has to pay or deny a claim by making a request for additional verification of the claim “within 15 business days of receipt [of one] of the prescribed verification forms.” 11 NYCRR 65-3.5(b); see also, Nyack Hosp. v General Motors Acceptance Corp., 27 AD3d 96 (2nd Dept 2005), lv to app granted, 7 NY3d 710 (2006), aff’d as mod 8 NY3d 294 (2007); New York Hosp. Medical Center of Queens v Country Wide Ins. Co., 295 AD2d 583, 584-585 (2nd Dept 2002); New York & Presbyterian Hosp. v American Tr. Ins. Co., 287 AD2d 699, 700 (2nd Dept 2001). If the verification is not provided within 30 calendar days after the original request, “[a]t a minimum . . . the insurer shall, within 10 calendar days, follow up with the party from whom the verification was requested, either by telephone call, properly documented in the file, or by mail.” 11 NYCRR 65-3.6(b).

An insurer does not have to pay or deny a claim until it has received verification of all of the relevant information requested. See, Montefiore Medical Center v Government Employees Ins. Co., 34 AD3d 771 (2nd Dept 2006); see also, Mount Sinai Hosp. v Allstate Ins. Co., 25 AD3d 673, 674 (2nd Dept 2006). Interest only accrues when payment of a no-fault claim is “overdue.” 11 NYCRR 65-3.8(a). Benefits are overdue only if not paid within 30 calendar days of when the insurer receives a claim or verification. Insurance Law § 5106(a), 11 NYCRR 65-3.8(a); Presbyterian Hosp. in City

of N.Y. v Maryland Cas. Co., 90 NY2d 274, 278 (1991); New York & Presbyt. Hosp. v Progressive Cas. Ins. Co., 5 AD3d 568, 570 (2nd Dept 2004).

New York Hospital alleges that it provided medical care to its assignor Olga Jara from February 5, 2011 through February 7, 2011 for injuries which were the result of a February 5, 2011 automobile accident. It further alleges that Olga Jara was a person covered under an automobile liability insurance policy issued by Country Wide to Michael Guiltanda which contained a New York State no-fault endorsement; that it billed Country Wide for its services via a Hospital Facility form N-F5 as well as a UB-04 for \$4,960.67 on February 25, 2011 which was mailed certified mail, return receipt requested and received by Country Wide on March 3, 2011; and, that in violation of 11 NYCRR 65-3.8(a)(1), (c) New York Hospital failed to pay the bill or issue a denial form. New York Hospital seeks statutory interest and attorneys' fees pursuant to Insurance Law § 5106(a) and 11 NYCRR 65-4.6.

NYU-Hospital alleges that it provided medical care to its assignor Idalia Gonzalez from February 22 through February 23, 2011 for injuries which resulted from a November 3, 2010 motor vehicle accident. It further alleges that Idalia Gonzalez was a person covered under an automobile liability insurance policy issued by Country Wide to Arlene Cruz which contained a New York State no-fault endorsement; that it billed Country Wide for its services via a Hospital Facility Form N-F5 as well as a UB-04 and DRG Master Output Report for \$16,553.40 on March 3, 2011 which was mailed certified mail, return receipt requested and received by Country Wide on March 7, 2011; and, that in violation of 11 NYCRR 65-3.8(a)(1), (a), NYU-Hospital failed to pay the bill or issue a denial form. NYU-Hospital seeks statutory interest and attorneys' fees pursuant to Insurance Law §§5106(a) and 11 NYCRR 65-4.6.

In support of its motion, New York Hospital has submitted a copy of the return receipt which indicates that an "NFS AOB UB-04 Olga Jara" was received by Country Wide on March 3, 2011. It has also submitted an affidavit of Steven Attias, a Biller and Account Representative of New York Hospital, who is employed by Hospital Receivable Systems, Inc. He attests that he has personal knowledge about Olga Jara's patient account and that on February 25, 2011 he billed Country Wide via a hospital facility form NF-5 and UB-04. He attests to having mailed those forms "via certified mail at a United States Post Office located in Bellmore, New York under certified mail number 7010 2780 0002 8255 8113" and that the United States Postal Service returned the receipt for that number signed by a representative of defendant dated March 3, 2011. He further attests that defendant insurer has not paid or denied that claim.

Similarly, in support of its motion, NYU-Hospital has submitted a copy of the return receipt which indicates that an "NFS AOB UB-04 DRU Idalia Gonzalez" was received by Country Wide on March 7, 2011. It has also submitted the affidavit of Steven Attias, a Biller and Account Representative of NYU-Hospital who is employed by Hospital Receivable Systems, Inc. He attests that he has personal knowledge about Idalia Gonzalez's patient account and that on March 3, 2011, he billed Country Wide via a hospital facility form NF-5, UB-04 and DRG Master Output Report. He attests to having mailed those forms on March 3, 2011 "via certified mail at a United States Post Office located in Bellmore, New York, under certified mail number 7010 2780 0002 8255 8403" and that the United States Postal Service returned the receipt for that number signed by a representative of defendant dated March 7, 2011. He further attests that defendant insurer has not paid or denied that claim.

Steven Attias' attestment to having personally mailed the pertinent forms coupled with

signed return receipt cards establishes the plaintiff hospitals' mailings and the defendants' receipt of the requisite forms. Westchester Medical Center v Mercury Cas. Co., 22 Misc 3d 233 (2008) citing Westchester Medical Center v Liberty Mut. Ins. Co., 40 AD3d 981 (2nd Dept 2007); Mount Sinai Hosp. v Joan Service Corp., 22 AD3d 649 (2nd Dept 2005). In addition, while certified mail receipts alone do not provide evidence of receipt of a particular item (Mid City Const. Co., Inc. v Sirius America Ins. Co., 70 AD3d 789 [2nd Dept 2010]; New York & Presbyterian Hosp. v Allstate Ins. Co., 29 AD3d 548 (2nd Dept. 2006); State Farm Mut. Auto. Ins. Co. [Kankam], 3 AD3d 418, 419 [1st Dept 2004]), where, like here, the receipts bear specific item numbers pertaining to a specific claimant or account, they are satisfactory to establish receipt thereof (Westchester Medical Center v Liberty Mutual Insurance Company, *supra*; see also, New York and Presbyterian Hosp. v Country Wide Ins. Co., 44 AD3d 729 [2nd Dept 2007]; The New York Hosp. Medical Center of Queens v Country Wide Ins. Co., 2008 WL 2582871 [Supreme Court Nassau County 2008]).

The plaintiff hospitals have accordingly established their entitlement to summary judgment, thereby shifting the burden to the defendant to establish the existence of material triable issues of fact.

In opposition, the defendant, Country Wide, in fact acknowledges receipt of the Olga Jara claim on March 4, 2011. It nevertheless maintains that in accordance with the applicable insurance regulations, it issued a verification request to New York Hospital regarding Olga Jara's claim on March 29, 2011 as well as a second follow-up verification request on April 29, 2011, neither of which have been responded to. Country Wide also acknowledges receipt of Idalia Gonzalez's claim on March 8, 2011. It nevertheless maintains that in accordance with the applicable insurance regulations, it issued a verification request to NYU Hospital on March 22, 2011 as well as a second

follow-up verification request on April 22, 2011, neither of which have been responded to. The issuance and mailing of those requests for verification has been established via an affidavit of Enz Lyons, a No-Fault Litigation Supervisor at Country Wide, who has set forth in detail the routine practice and procedure regularly followed by Country Wide upon receipt of claims. Nassau Ins. Co. v Murray, 46 NY2d 828, 829-830 (1978); see also, Thibeault v Travelers Ins. Co., 37 AD3d 1000 (3rd Dept 2007). Nevertheless, New York Hospital has established via an affidavit from Sharon Shafi, a Secretary employed by Hospital Receivables Systems which handles the no-fault claims for New York Hospital, as well as a return receipt, that the complete medical record of Olga Jara was sent to Country Wide via certified mail return receipt requested on March 8, 2011 and received by it on March 10, 2011. By another affidavit of Sharon Shafi, a Secretary employed by Hospitals Receivables Systems which handles the no-fault claims for NYU-Hospital, NYU-Hospital has also established that the complete medical records of Idalia Gonzalez was sent to Country Wide via certified mail return receipt requested on March 16, 2011 and received by it on March 21, 2011, thereby laying to rest Country Wide's defense that the claims advanced are premature.

Accordingly, after due deliberation, it is

ORDERED, that the plaintiff New York Hospital's motion for summary judgment is **granted** to the extent that it is awarded **\$4,960.67** for its claim for no-fault benefits as assignee of Olga Jara; and it is further

ORDERED, that the plaintiff NYU-Hospital's motion for summary judgment is **granted** to the extent that it is awarded **\$16,553.40** for its claim for no-fault benefits as assignee of Idalia Gonzalez; and it is further

ORDERED, that the plaintiff New York Hospital is awarded statutory interest commencing

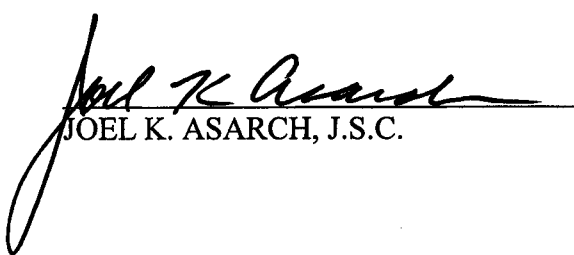
30 days after Olga Jara's claim was complete, i.e., April 9, 2011, and the plaintiff NYU-Hospital is awarded statutory interest commencing 30 days after Idalia Gonzalez's claim was complete, i.e., April 20, 2011. Insurance Law § 5106; and it is further

ORDERED, that the plaintiffs are also awarded attorneys' fees as allowed by Insurance Law § 5106(a) and 11 NYCRR 65-4.6(e) and the superintendent's interpretation thereof which limits the attorneys' fee to "20% of the total amount of first party benefits awarded [which] is derived from the total amount of individual bills disputed . . . regardless of whether one bill or multiple bills are presented as a total claim for benefits, based upon the health services rendered by a provider to the same eligible insured." LMK Psychological Services, P.C. v State Farm Mut. Auto. Ins. Co., 12 NY3d 217 (2009).

Submit judgment on notice.

Dated: Mineola, New York
September 12, 2011

ENTER:


JOEL K. ASARCH, J.S.C.

Copies mailed to:

Joseph Henig, P.C.
Attorneys for Plaintiff

Jaffe & Koumourdas, LLP
Attorneys for Defendant

ENTERED

SEP 13 2011

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COUNTY CLERK'S OFFICE**