

Richmond Univ. Med. Ctr. v Fiduciary Ins. Co. of Am.
2011 NY Slip Op 32535(U)
September 20, 2011
Sup Ct, Nassau County
Docket Number: 3271/11
Judge: Antonio I. Brandveen
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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: ANTONIO I. BRANDVEEN
J. S. C.

RICHMOND UNIVERSITY MEDICAL CENTER, a/a/o HEYDI OROZCO; LENOX HILL HOSPITAL, a/a/o JOHN FERRIS; THE NEW YORK AND PRESBYTERIAN HOSPITAL, a/a/o LUIS OVIEDO, IRMGARD MURRAY,

TRIAL / IAS PART 30
NASSAU COUNTY

Index No. 3271/11

Motion Sequence No. 001, 002

Plaintiffs,

- against -

FIDUCIARY INSURANCE COMPANY OF AMERICA,

Defendant.

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits	<u>1, 2</u>
Answering Affidavits	<u>3</u>
Replying Affidavits	<u>4</u>
Briefs: Plaintiff's / Petitioner's	_____
Defendant's / Respondent's	_____

The plaintiff medical center moves pursuant to CPLR 3212 for summary judgment against the defendant insurance company. This action seeks payment of four separate no-fault billings, and are joined pursuant to CPLR 1002 (a) as arising from a uniform contract of insurance involving the same statutory interpretation. The insurance company moves pursuant to CPLR 3211 and 3212 to dismiss the verified complaint, and for

summary judgment. Both sides contradict the opposing side's motion.

This Court carefully reviewed and considered all of the papers submitted by the parties with respect to both motions. The State Court of Appeals holds:

New York's no-fault automobile insurance system is designed "to ensure prompt compensation for losses incurred by accident victims without regard to fault or negligence, to reduce the burden on the courts and to provide substantial premium savings to New York motorists" (*Matter of Medical Socy. of State of N.Y. v Serio*, 100 NY2d 854, 860 [2003]). In furtherance of these goals, the Superintendent of Insurance has adopted regulations implementing the No-Fault Law (Insurance Law art 51), including circumscribed time frames for claim procedures.

These regulations require an accident victim to submit a notice of claim to the insurer as soon as practicable and no later than 30 days after an accident (see 11 NYCRR 65-1.1, 65-2.4 [b]). Next, the injured party or the assignee (typically a hospital, as in the case here) must submit proof of claim for medical treatment no later than 45 days after services are rendered (see 11 NYCRR 65-1.1, 65-2.4 [c]).FN2 Upon receipt of one or more of the prescribed verification forms used to establish proof of claim, such as the NYS Form NF-5, an insurer has 15 business days within which to request "any additional verification required by the insurer to establish proof of claim" (11 NYCRR 65-3.5 [b]).FN3 An insurer may also request "the original assignment or authorization to pay benefits form to establish proof of claim" within this time frame (11 NYCRR 65-3.11 [c]). Significantly, an insurance company must pay or deny the claim within 30 calendar days after receipt of the proof of claim (see Insurance Law § 5106 [a]; 11 NYCRR 65-3.8 [c]). If an insurer seeks additional verification, however, the 30-day window is tolled until it receives the relevant information requested (see 11 NYCRR 65-3.8 [a] [1]).

An insurer's failure to pay or deny a claim within 30 days carries substantial consequences. By statute, overdue payments *318 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 (see Insurance Law § 5106 [a]). More importantly, a carrier that fails to deny a claim within the 30-day period is generally precluded from asserting a defense against payment of the claim (see *Presbyterian Hosp. in City of N.Y. v Maryland Cas. Co.*, 90 NY2d 274, 282 [1997], rearg denied 90 NY2d 937 [1997]). This Court has

recognized a narrow exception to this preclusion remedy for situations where an insurance company raises a defense of lack of coverage (*see Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 199 [1997]). In such cases, an insurer who fails to issue a timely disclaimer is not prohibited from later raising the defense because “the insurance policy does not contemplate coverage in the first instance, and requiring payment of a claim upon failure to timely disclaim would create coverage where it never existed” (*Matter of Worcester Ins. Co. v Bettenhauser*, 95 NY2d 185, 188 [2000]).

As a corollary to the Presbyterian preclusion rule, Appellate Division case law consistently holds that a carrier’s failure to seek verification or object to the adequacy of claim forms pursuant to 11 NYCRR 65-3.5 precludes it from interposing any defenses based on such deficiencies (*see e.g. Westchester Med. Ctr. v Safeco Ins. Co. of Am.*, 40 AD3d 984 [2d Dept 2007]; *LMK Psychological Servs., P.C. v Liberty Mut. Ins. Co.*, 30 AD3d 727, 728-729 [3d Dept 2006]). We concur and note that an insurer that requests additional verification after the 10- or 15-business-day periods but before the 30-day claim denial window has expired is entitled to verification. In these instances, the 30-day time frame to pay or deny the claim is correspondingly reduced (*see* 11 NYCRR 65-3.8 [j]; *Nyack Hosp. v General Motors Acceptance Corp.*, 8 NY3d 294, 300 [2007]) *Hospital for Joint Diseases v Travelers Prop. Cas. Ins. Co.*, 9 N.Y.3d 312, 849 N.Y.S.2d 473 [2007].

Here, the plaintiff has established a *prima facie* entitlement to summary judgment as a matter of law on the first cause of action. The plaintiff has proffered evidence showing the plaintiff’s \$4,872.69 bill was received by the defendant on January 7, 2011. In opposition, the defendant fails to show a triable issue of fact. The defense refers to different bills for different amounts and different dates of admission having nothing to do with the first cause of action.

The plaintiff establishes a *prima facie* entitlement to summary judgment as a matter of law on the second cause of action. This matter is the result of a pedestrian struck by a

motor vehicle together with the defendant's refusal to pay for the emergency care rendered by the plaintiff. The plaintiff present a reasonable excuse for the one day delay in submitting its proof, to wit the plaintiff's difficulty in ascertaining the identity of the insurer. 11 NYCRR § 65-3.5 (1) permits special consideration under such circumstances where the injuries are due to a "pedestrian knockdown." This Court determines the late submission by one day was not unreasonable under these circumstances. In opposition, the defendant fails to show a triable issue of fact.

The plaintiff establishes a *prima facie* entitlement to summary judgment as a matter of law on the third cause of action (*see Westchester Med. Ctr. v Liberty Mut. Ins. Co.*, 40 A.D.3d 981, 837 N.Y.S.2d 210 [2nd Dept, 2007]). The plaintiff proffers evidence showing the defendant signed a certified mail receipt for Form NF-5, and a United States Postal Service track and confirm report confirming a January 5, 2011 delivery to the defendant with the same tracking number as on the certified mail receipt. Moreover, plaintiff shows a copy of the complete medical record was mailed to the defendant by certified mail on January 21, 2011, and the defendant signed a certified mail receipt for Form NF-5, and a United States Postal Service track and confirm report confirming a January 24, 2011 delivery to the defendant with the same tracking number as on that certified mail receipt. In opposition, the defendant fails to show a triable issue of fact.


The plaintiff establishes a *prima facie* entitlement to summary judgment as a matter of law on the third cause of action. In opposition, the defendant does not oppose this cause of action in its responsive papers, thus it fails to show a triable issue of fact.

This Court determines the defendant fails to establish a *prima facie* entitlement to summary judgment and dismissal as a matter of law on its motion (*see* CPLR 3211 and 3212; *Westchester Med. Ctr. v Liberty Mut. Ins. Co.*, 40 A.D.3d 981, 837 N.Y.S.2d 210 [2nd Dept, 2007]). The defense does not meet its statutory burden by showing the plaintiff's complaint fails to state a cause of action because the plaintiff failed to timely respond to the defendant's verification request. The defense fails to show it never received the no-fault bills upon which the instant claim is predicated. The evidence proffered by the plaintiff shows otherwise.

Accordingly the plaintiff's motion is granted for the amounts requested with statutory interest and attorney fees pursuant to 11 NYCRR § 65-4.6 (e), together with costs and disbursements. The defense motion is denied. The Clerk is directed to enter judgment for the plaintiff pursuant to CPLR 5016 upon submission of a proposed judgment which complies with the mandates of CPLR 5018.

So ordered.

Dated: September 20, 2011

ENTER: 

 J. S. C.

FINAL DISPOSITION

ENTERED
 SEP 23 2011
 NASSAU COUNTY
 COUNTY CLERK'S OFFICE