

Westchester Med. Ctr. v Liberty Mut. Ins. Co.

2012 NY Slip Op 30157(U)

January 11, 2012

Sup Ct, Nassau County

Docket Number: 7826/11

Judge: Jeffrey S. Brown

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SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

**P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE**

-----X
**WESTCHESTER MEDICAL CENTER a/a/o
KEVIN VELASQUEZ; THE NYACK HOSPITAL,
a/a/o KATHERINE JACKSON; MOUNT SINAI
HOSPITAL OF QUEENS and GUS MAUROMATIS,**

TRIAL/IAS PART 21

INDEX # 7826/11

**Motion Seq. 1, 2
Motion Date 9.1.11
Submit Date 12.20.11**

Plaintiff,

-against-

LIBERTY MUTUAL INSURANCE COMPANY,

Defendants.
-----X

The following papers were read on this motion:

Papers Numbered

Notice of Motion, Affidavits (Affirmations), Exhibits Annexed.....	1
Notice of Cross-Motion, Affidavits (Affirmations), Exhibits Annexed.....	2
Answering Affidavit	3

The instant action involves no-fault insurance claims against defendant by three hospitals for services rendered to three patients involved in automobile accidents. The three claims herein stem from hospital bills that were allegedly not paid by the defendant insurer. Plaintiffs filed the instant motion seeking summary judgment for the unpaid bills, statutory interest plus attorney's fees pursuant to §5106(a) of the New York State Insurance Law.

First Cause of Action- Velasquez

The plaintiff, Westchester Medical Center is the assignee for health services rendered to Kevin Velasquez during the period January 4, 2011 through January 6, 2011 arising out of a motor vehicle accident on January 4, 2011.

On January 18, 2011 the plaintiff, Westchester Medical Center billed the defendant with a Hospital Liability Form (NF-5) and a UB-04 for payment of a hospital bill in the sum of 7,332.80. The billing was marked certified mail, return receipt requested and was received by the defendant on January 20, 2011.

Plaintiff states that defendant failed to either pay the claim or issue a denial of claim form. Defendant issued an untimely, defective denial of claim dated June 7, 2011. It also contains the wrong dollar amount and the wrong amount in dispute. Furthermore, it states that benefits were denied because the operator was in an intoxicated condition. Plaintiff states that this assertion is without any evidentiary proof.

The plaintiff, Westchester Medical Center, has established a “*prima facie* showing that it was entitled to judgment as a matter of law on its complaint to recover no-fault medical payments by submitting evidence that the prescribed statutory billing forms had been mailed and received, and that the defendant had failed to either pay or deny the claim within the requisite 30-day period” (*Westchester Medical Center v Lincoln General Ins. Co.*, 60 A.D.3d 1045 [2nd Dept 2009]; see Insurance Law § 5106[a]; 11 NYCRR 65-3.5; *Hospital for Joint Diseases v Travelers Prop. Cas. Ins. Co.*, 9 N.Y.2d 312, 317-318 [2007]; *New York & Presbyt. Hosp. v Allstate Ins. Co.*, 31 A.D.3d 512, 513 [2006]; *Nyack Hosp. v General Motors Acceptance Corp.*, 27 A.D.3d 96, 100 [2005]; *New York & Presbyt. Hosp. v AIU Ins. Co.*, 20 A.D.3d 515, 516 [2005]; *New York & Presbyt. Hosp. v Progressive Cas. Ins. Co.*, 5 A.D.3d 568, 570 [2004]).

In opposition and in support of its cross-motion, defendant Liberty Mutual states that the bill was properly and timely denied based on Regulation 68, 65-1.1 policy exclusion of coverage for operating a motor vehicle while in an intoxicated condition or while ability is impaired by the use of a drug.

In reply, plaintiff states that it fully complied with plaintiff's verifications as of March 22, 2011. The defendant's denial of claim is dated June 7, 2011; therefore, it is untimely and defendant is precluded from interposing a defense to the action. Furthermore, defendant failed to prove that the assignor was operating a motor vehicle in an intoxicated condition, and there is no evidence that the accident was as a result of the operator's intoxication.

The court finds that defendant's denial of claim dated June 7, 2011 was untimely. Therefore, summary judgment is warranted (see, *Presbyterian Hosp. In City of New York v. Maryland Cas. Col.*, 90 NY2d 274; *Westchester Med. Ctr. V. Lincoln Gen. Ins. Co.*, 62 AD3d 1045).

Second Cause of Action -Jackson

The plaintiff, Nyack Hospital is the assignee for health services rendered to Katherine Jackson during the period February 20, 2011 through February 24, 2011 arising out of a motor vehicle accident on February 14, 2011.

On April 14, 2011 the plaintiff, Nyack Hospital billed the defendant with a Hospital Liability Form (NF-5) and a UB-04 for payment of a hospital bill in the sum of \$4,930.18. The billing was marked certified mail, return receipt requested and was received by the defendant on January 20, 2011.

Plaintiff states that defendant failed to either pay the claim or issue a denial of claim form.

The plaintiff, Nyack Hospital, has established a “*prima facie* showing that it was entitled to judgment as a matter of law on its complaint to recover no-fault medical payments by submitting evidence that the prescribed statutory billing forms had been mailed and received, and that the defendant had failed to either pay or deny the claim within the requisite 30-day period” (*Westchester Medical Center v Lincoln General Ins. Co.*, 60 A.D.3d 1045 [2nd Dept 2009]; see Insurance Law § 5106[a]; 11 NYCRR 65-3.5; *Hospital for Joint Diseases v Travelers Prop. Cas. Ins. Co.*, 9 N.Y.2d 312, 317-318 [2007]; *New York & Presbyt. Hosp. v Allstate Ins. Co.*, 31 A.D.3d 512, 513 [2006]; *Nyack Hosp. v General Motors Acceptance Corp.*, 27 A.D.3d 96, 100 [2005]; *New York & Presbyt. Hosp. v AIU Ins. Co.*, 20 A.D.3d 515, 516 [2005]; *New York & Presbyt. Hosp. v Progressive Cas. Ins. Co.*, 5 A.D.3d 568, 570 [2004]).

In opposition, defendant states that it sent plaintiff requests for additional information on April 27, 2011 and May 27, 2011. To date, defendant alleges it has not received any of the requested information. Therefore, its period to pay on the claim has not begun to run and the issue is not ripe for litigation.

In reply, plaintiff provides documentation that in response to defendant's request, a complete set of medical records were mailed to the defendant on July 1, 2011 via certified mail. The documentation shows that defendant signed for the records on July 5, 2011. A Track and Confirm Report from the U.S. Postal Service confirmed that the defendant received the medical records on July 5, 2011.

The court finds that plaintiff complied with its statutory duties and defendant failed to pay the claim or issue a denial of claim form within the proscribed period of time. Hence, summary judgment is warranted.

Third Cause of Action- Mauromatis

The plaintiff, Mount Sinai Hospital is the assignee for health services rendered to Gus Mauromatis on February 17, 2011 arising out of a motor vehicle accident on November 26, 2010.

On March 28, 2011 the plaintiff, Mount Sinai Hospital billed the defendant with a Hospital Liability Form (NF-5) and a UB-04 for payment of a hospital bill in the sum of \$4,984.79. The billing was marked certified mail, return receipt requested and was received by the defendant on March 31, 2011.

Plaintiff states that defendant failed to either pay the claim or issue a denial of claim form.

The plaintiff, Mount Sinai Hospital, has established a "*prima facie* showing that it was entitled to judgment as a matter of law on its complaint to recover no-fault medical payments by submitting evidence that the prescribed statutory billing forms had been mailed and received, and that the Defendant had failed to either pay or deny the claim within the requisite 30-day period" (*Westchester Medical Center v Lincoln General Ins. Co.*, 60 A.D.3d 1045 [2nd Dept 2009]; see Insurance Law § 5106[a]; 11 NYCRR 65-3.5; *Hospital for Joint Diseases v Travelers Prop. Cas. Ins. Co.*, 9 N.Y.2d 312, 317-318 [2007]; *New York & Presbyt. Hosp. v Allstate Ins. Co.*, 31 A.D.3d 512, 513 [2006]; *Nyack Hosp. v General Motors Acceptance Corp.*, 27 A.D.3d 96, 100 [2005]; *New York & Presbyt. Hosp. v AIU Ins. Co.*, 20 A.D.3d 515, 516 [2005]; *New York & Presbyt. Hosp. v Progressive Cas. Ins. Co.*, 5 A.D.3d 568, 570 [2004]).

In opposition, defendant states that the complaint should be dismissed and the matter should be submitted to alternative dispute resolution in National Arbitration Forums (NAF) due to the fact that it is a New Jersey claim and New Jersey law applies. In the alternative, defendant argues that the bill was properly denied under New Jersey law via a letter dated March 24, 2011 because the claimant failed to appear for an Independent Medical Examination (IME) on February 23, 2011 and March 23, 2011 in violation of the policy of applicable insurance. Defendant sent a letter dated March 24, 2011 to the claimant's purported attorney's office denying the claim. There is no evidence that a formal denial of claim form was ever sent to claimant.

In reply, plaintiff states that there is no merit to defendant's contention that the plaintiff's claim must be resolved through arbitration as the Appellate Division has held that the no-fault law provides claimants with the option of commencing a plenary action or submitting the dispute to arbitration (see, *Global Surgical Supply v. GEICO Ins. Co.*, 59 AD3d 129). Additionally, since the accident occurred in the state of New York, and the defendant is licensed to do business in the State of New York, New York law is applicable to accidents that occur within its boundaries.

Furthermore, plaintiff argues that the "denial letter" dated March 24, 2011 is not sufficient to deny the claim. A Denial of Claim form as prescribed by 11 NYSRR 65-3.4(c)(11) was required.

The court finds that summary judgment is warranted. Defendant failed to comply with 11 NYSRR 65-3.4(c)(11) in issuing a proper Denial of Claim Form. Since defendant's letter denying the claim was a nullity, defendant is precluded from interposing a defense to this action

Accordingly, it is

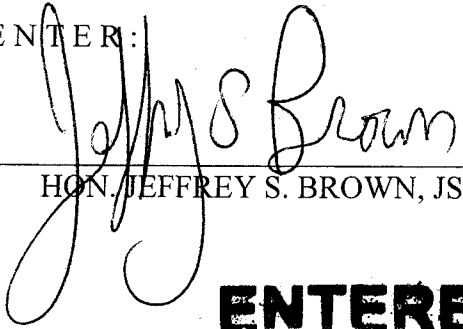
ORDERED, that plaintiff's application for summary judgment is GRANTED on the first, second and third causes of action.

Submit Judgments on Notice.

The foregoing constitutes the decision and order of this Court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
January 11, 2012

ENTER:


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ENTERED
JAN 17 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE