

National Interstate Ins. Co. v US Tech Rehab Inc.

2020 NY Slip Op 35687(U)

June 5, 2020

Supreme Court, Queens County

Docket Number: Index No. 714308/17

Judge: Carmen R. Velasquez

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FILED

**6/5/2020
11:50 AM**

SHORT FORM ORDER

NEW YORK SUPREME COURT - QUEENS COUNTY

**COUNTY CLERK
QUEENS COUNTY**

Present: HONORABLE CARMEN R. VELASQUEZ IAS PART 38
Justice

-----x
NATIONAL INTERSTATE INSURANCE COMPANY, Index No. 714308/17

Plaintiff,

Motion

Date: February 24, 2020

-against-

M# 2

US TECH REHAB INC. A/a/o SHAQUANA
JEAN BAPTISTE and GEICO INDEMNITY
COMPANY, INC.,

Defendants.

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The following papers numbered EF 61-83 read on this motion by defendant GEICO Indemnity Co. for summary judgment; and cross motion by US Tech Rehab Inc. A/a/o Shaquana Jean Baptiste to reinstate and confirm the master arbitration award and for attorney fees.

PAPERS
NUMBERED

Notice of Motion - Affidavits - Exhibits.....	EF 61-66
Notice of Cross Motion - Affidavits - Exhibits...	EF 68-74
Affirmation in Opposition - Exhibits.....	EF 67, 75-80
Replying Affirmation.....	EF 81-83

Upon the foregoing papers it is ordered that this motion by defendant GEICO Indemnity Co. for summary judgment and cross motion by defendant US Tech Rehab Inc. A/a/o Shahquana Jean Baptiste are decided as follows:

Shaquana Jean Baptiste was involved in a motor vehicle accident while she was a passenger on a school bus. The bus was insured by plaintiff, National Interstate Ins. Co. (hereinafter National Interstate). Baptiste sought medical treatment and assigned her rights to collect no-fault benefits (hereinafter PIP) to defendant US Tech Rehab, Inc. (hereinafter US Tech Rehab). National Interstate determined that Baptiste was covered under her mother's Arkansas auto insurance policy with GEICO

Indemnity Company, Inc. (hereinafter GEICO). GEICO paid multiple medical bills on behalf of Baptiste and denied further claims totaling \$5,884.10 for equipment rental charges when the \$10,000 medical benefits coverage was exhausted.

The parties submitted the dispute to arbitration and on May 18, 2017, the arbitrator issued an award, finding that GEICO, pursuant to Insurance Law §§ 5103 and 5107, must increase its coverage to conform its policy to the New York minimum \$50,000 PIP limits, and awarding \$5,884.10, plus interest, and attorney's fees pursuant to 11 NYCRR 65-4.6 (d) to US Tech Rehab. On appeal, the master arbitrator reasoned that Insurance Law § 5107 did not apply, since there was no evidence the vehicle insured by Geico had any presence in New York. On August 8, 2017, the master arbitrator modified the award to read: "Respondent National Interstate shall pay the applicant no-fault benefits in the sum of \$5,884.10." The master arbitrator also awarded interest and attorney's fees pursuant to 11 NYCRR 65-4.6 (d).

National Interstate commenced this action on or about October 16, 2017 for a de novo adjudication of the insurance dispute regarding US Tech Rehab's entitlement to receive payments from National Interstate for medical services rendered to Baptiste between March 31, 2015 and May 11, 2015 in the amount of \$5,884.10.

The court will first address GEICO's motion. GEICO moves for summary judgment on the basis that Arkansas law applies and the underlying policy's PIP limit of \$10,000 was exhausted at the time the bills in dispute were submitted. In support of its motion, GEICO appends a copy of the pleadings, the master arbitration award, and the sworn affidavits of Robert Smid and Greer Carty.

Smid, a senior underwriter with GEICO, stated that GEICO issued an Arkansas auto insurance policy, effective from June 15, 2014 to December 15, 2014, to P.L. Jean-Baptiste with a limit of \$10,000 in medical benefits coverage. Carty, a claims associate with GEICO, states that GEICO received and paid various bills in connection with medical services provided by US Tech Rehab and received by Baptiste. Carty further states that when the medical benefits coverage was exhausted at \$10,000, a global denial of claim form was sent to the insured and all known medical service providers. Furthermore, the bills in question submitted to GEICO for supplies rendered to Baptiste between March 31, 2015 and May 11, 2015 were denied based on coverage exhaustion.

GEICO argues that Arkansas law applies and that it has no obligation to continue to pay the bills in question once the policy limit has been exhausted. National Interstate, in opposition,

argues that New York law applies and GEICO is required to conform the Arkansas policy to meet New York's financial requirements, under Insurance Law § 5107 (a).

"Article 51 of the New York Insurance Law is known as the Comprehensive Motor Vehicle Insurance Reparations Act and is commonly referred to as the No-Fault Law." (*Matter of Am. Ind. Ins. Co. v Nova Acupuncture, P.C.*, 137 AD3d 1270, 1271 [2d Dept 2016].) "The purpose of this statute is to 'assure claimants of expeditious compensation for their injuries through prompt payment of first-party benefits without regard to fault and without expense to them.'" (*Id.*, quoting *New York Hosp. Med. Ctr. of Queens v. Motor Veh. Acc. Indem. Corp.*, 12 AD3d 429, 430 [2d Dept 2004].)

Pursuant to 11 NYCRR 65-3.12 (9), "[a]n applicant, other than an operator, owner, or employee of the owner or operator of a ... school bus, who, while an occupant of such bus or school bus, sustains a personal injury arising out of the use or operation in New York State of such ... school bus, shall institute the claim against the applicant's own insurer. If the applicant does not have an insurer, the applicant shall institute the claim against the insurer of the ... school bus."

Insurance Law § 5107 (a), entitled "Coverage for non-resident motorists," provides, in pertinent part, that:

Every insurer authorized to transact or transacting business in this state, or controlling or controlled by or under common control by or with such an insurer, which sells a policy providing motor vehicle liability insurance coverage or any similar coverage in any state ..., shall include in each such policy coverage to satisfy the financial security requirements of article six or eight of the vehicle and traffic law and to provide for the payment of first party benefits pursuant to subsection (a) of section five thousand one hundred three of this article *when a motor vehicle covered by such policy is used or operated in this state.* (Emphasis added.)

11 NYCRR 65-1.8 (a), the enabling regulation to Insurance Law § 5107 provides, in relevant part, that:

The automobile insurance policies of every authorized insurer which are sold in any other state . . . shall be deemed to satisfy the financial security requirements of article 6 or 8 of the New York Vehicle and Traffic Law, and shall be deemed to provide for the payment of first-party benefits pursuant to section 5103 of the New York Insurance Law *when the insured motor vehicle is used or*

operated in this State. " (Emphasis added.)

Under New York's no-fault insurance law, the mandatory PIP coverage is \$50,000. (11 NYCRR 65-1.1.) However, since there is no evidence in the record that the vehicles insured under the Arkansas policy were used or operated in New York, GEICO is not required to increase its coverage to meet the financial security requirements of New York. (Cf. *Matter of Govt. Employees Ins. Co. v Ally*, 106 AD3d 736, 737 [2d Dept 2013].) Under Arkansas law, PIP coverage is optional. (Ark Code Ann § 27-22-104.) Thus, the court finds that under either Arkansas or New York law, GEICO's PIP coverage has been exhausted and summary judgment in favor of GEICO is warranted.

The court will now address the portion of US Tech Rehab's cross motion seeking to reinstate and confirm the master arbitration award. The master arbitration award, dated August 23, 2017, was mailed on August 25, 2017. Pursuant to CPLR 7510, "[t]he court shall confirm an award upon application of a party made within one year after its delivery to him." Here, US Tech Rehab files the instant cross motion on January 24, 2020, after the one-year period for the making of such an application had elapsed. Thus, this branch of US Tech Rehab's cross motion seeking to reinstate and confirm the master arbitration award is denied as untimely. (See *Matter of Nahum v Mansour*, 109 AD3d 548, 549 [2d Dept 2013]; *Matter of Salamon v Friedman*, 11 AD3d 700, 700 [2d Dept 2004]; *Teachers Ass'n of Tarrytowns v Tarrytown Bd. of Ed.*, 59 AD2d 890, 890 [2d Dept 1977].)

Turning to the branch of US Tech Rehab's cross motion seeking attorney's fees, "[t]he general rule is that in proceedings involving arbitration, as in other litigation, an attorney's fee is not recoverable unless provided for by agreement or statute." (*Matter of GEICO Ins. Co. v AAAMG Leasing Corp.*, 148 AD3d 703, 705 [2d Dept 2017].) Insurance Law § 5106 (a) provides that if a valid claim or portion of a claim for no-fault benefits is overdue, "the claimant shall also be entitled to recover his attorney's reasonable fee, for services necessarily performed in connection with securing payment of the overdue claim, subject to limitations promulgated by the superintendent in regulations."

As applicable here, the superintendent's regulations provide that an attorney's fee for services rendered in connection with a court adjudication of a dispute de novo . . . shall be fixed by the court adjudicating the matter. (11 NYCRR 65-4.10[j][4].) The court has reviewed Justin Skaferowsky, Esq.'s submissions and finds that the amount requested, \$1980, is reasonable and commensurate with the work performed in connection with preparing the answer with counterclaims in this action.

Michael Hoenig, Esq., seeks attorney's fees in the sum of \$1215 for his work performed in preparing the instant cross motion and opposition. It is improper to award a "fee upon a fee" when the counsel fee award is based on time spent by counsel substantiating his fee. (*Hempstead Gen. Hosp. v Allstate Ins. Co.*, 106 AD2d 429, 431 [2d Dept 1984], *affd*, 64 NY2d 958 [1985]; see *Matter of GEICO Ins. Co. v AAAMG Leasing Corp.*, 148 AD3d 703, 706 [2d Dept 2017].) Here, Hoenig's affirmation does not distinguish the time he spent crafting the portions of the instant motion for attorney's fees. Thus, the court is unable to award reasonable attorney's fees with respect to Hoenig.

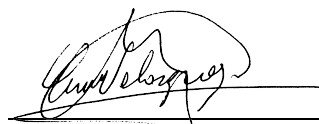
In light of the foregoing, US Tech Rehab's remaining contentions and arguments are either without merit or need not be addressed.

Accordingly, Geico's motion for summary judgment is granted.

The branch of US Tech Rehab's cross motion for attorney's fees is granted to the extent that US Tech Rehab is awarded \$1980 for legal services rendered in connection with this matter.

The remaining branches of US Tech Rehab's cross motion are denied. US Tech Rehab is granted leave to renew its request for attorney's fees with respect to Michael Hoenig, Esq. within thirty days after service of a copy of this order with notice of entry.

Dated: June 5, 2020



CARMEN R. VELASQUEZ, J.S.C.

FILED

6/5/2020

11:50 AM

**COUNTY CLERK
QUEENS COUNTY**