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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: HON. JOHN P. DUNNE, Justice

TRIAL/JAS, PART 12

**THE HOSPITAL FOR JOINT DISEASES,
a/a/o KEVIN CUSICK; THE N. Y.
HOSPITAL MEDICAL CENTER OF QUEENS,
a/a/o DERRICK LESLIE; THE N. Y. AND
PRESBYTERIAN HOSPITAL, a/a/o ROBIN WHEELER**

**Index No. 4324/03
Motion Seq. No. 1&2
Motion for summary
judgment & cross-motion
Motion submission: 8/16/03**

Plaintiff,

-against -

LIBERTY MUTUAL INSURANCE CO.

Defendant

The following papers read on this motion:

Notice of Motion and Cross-motion	XX
Answering Affidavits.....	X
Reply	X
Additional	X

Upon the foregoing papers, it is hereby ordered that the Plaintiffs motion for summary judgment and the Defendant's cross-motion for

summary judgment, dismissing the complaint are decided as follows:

The instant action combines three separate claims against three separate hospitals for alleged non-payment of no-fault bills pursuant to Sec. 5106(a) of the New York State Insurance Law.

Plaintiff argues that Plaintiff billed Defendant for payment of a hospital bill, in the sum of \$2,324.47, for services rendered to Kevin Cusick on December 5 to December 7, 2002, for an auto accident on November 19, 2002. Plaintiff states that the billing was mailed Certified, Return Receipt Requested, and received by Defendant on December 18, 2002. Plaintiff further states that the Defendant has failed to pay the bill or to issue a Denial of Claim Form.

With regard to the Second Cause of Action, Plaintiff claims that on December 4, 2002, it billed Defendant for a hospital bill, in the sum of \$2,226.29, for services rendered to Derrick Leslie on October 9, 2002 through October 10, 2002, for an auto accident on October 8, 2002. Plaintiff alleges the billing was received by Defendant on December 5, 2002, (Certified Mail, Return Receipt Requested). The Defendant paid said bill on March 24, 2003. Plaintiff alleges that said payment was untimely, and interest, plus attorney's fees, are due.

The Third Cause of Action involves a claim billed to Defendant on December 18, 2002, for services rendered to Robin Wheeler on November 20th through November 25, 2002, for an auto accident on November 20, 2002. The billing was mailed Certified, Return Receipt Requested and received by Defendant on December 20, 2002. The Plaintiff alleges the Defendant has failed to pay the bill or issue a Denial of Claim Form.

The Court notes that with respect to the billing under the First Cause of Action (Cusick), the billing was mailed to Defendant at 80 Grassland Road, Elmsford, New York 10523. The other two billings were sent to the Defendant at 50 Charles Lindbergh Blvd., Uniondale address.

Defendant argues that the claims should be severed since they involve three separate providers, injured parties, and three separate contracts of insurance. All the accidents took place on separate dates.

Defendants, in their cross-motion, do not deny they received the billings in question on the dates stated, but rather argue that Plaintiffs papers are defective for failure to establish a valid assignment of the no-fault benefit, failure to establish mailing procedures as to claims, or failure to produce evidence as to a motor vehicle accident occurred.

In addition, Defendant argues that the Plaintiff is not entitled to interest or attorney's fees on the Second Cause of Action since the claim was paid with interest before this lawsuit was commenced.

In support of the Defendant's position, Defendant points out that all the assignment forms or bills are not signed by the patient but rather contain the words "**on file**" with respect to signatures. The Court agrees that without more, this is **insufficient**.

The Defendant does not argue that they never received the billings or in the time period mentioned. Instead, they request information from an employee of the medical providers with respect to the mailing practices of the provider. This request alone, is

unnecessary and without merit. Plaintiff has submitted an Affidavit from an Account Representative employed by Hospital Receivables System, Inc., who claim to represent the Hospital's no fault accounts. The Defendant does not argue that this representation is unauthorized.

With respect to Plaintiffs' proof of the services arising out of injuries sustained in an automobile accident, Defendant points out the only proof was prepared by the hospital biller and not signed by patient.

With respect to the Second Cause of Action (late payment issue), the argument over when the action was commenced and when payment was made (not cashed), **cannot** be resolved on the submitted papers.

In its Sur-Reply at the literal 11th hour, the Plaintiff withdraws his Second and Third Causes of Action, thus rendering all of the previous arguments **moot**.

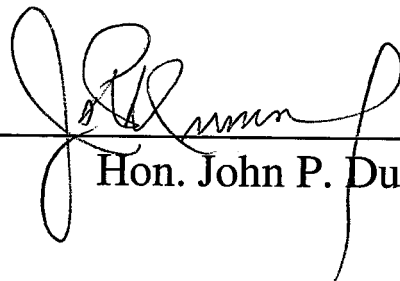
Plaintiff argues that lack of proof of the proper assignment is waived by the Defendants' failure to deny the claim or request verification. The Court, in this instance, **agrees. N. Y. Presbyterian Hospital v. American Transit Ins. Co., 287 A.D.2d 699.**

Therefore, Plaintiff's motion on the First Cause of Action is **granted**, in the amount of \$2,324.47, plus interest and attorney's fees (statutory). The Defendants cross-motion to dismiss is **denied**. However, the Defendants' application for costs and sanctions against Plaintiff is **granted** to the extent that \$250 costs is awarded to Defendants. The Plaintiff's frivolous conduct in wasting his

adversaries' time and the Court's in responding to voluminous papers on unnecessary Second and Third Causes of Action which were withdrawn in a "Sur-Reply", necessitates the imposition of costs.

It is, so Ordered.

Dated: October 1, 2003



Hon. John P. Dunne

ENTERED

OCT 07 2003

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**