

SCAN

SHORT FORM ORDER

md,mod

SUPREME COURT - STATE OF NEW YORK

Present:

HON. UTE WOLFF LALLY,

Justice

TRIAL/IAS, PART 5

NASSAU COUNTY

RICHMOND UNIVERSITY MEDICAL CENTER,
a/a/o RAFAEL CLAUDIO, WESTCHESTER
MEDICAL CENTER, a/a/o TASHON BROWN,

MOTION DATE: 8/6/09

INDEX No.:22143/08

MOTION SEQUENCE NO:2,3

X X X

Plaintiff(s),

-against

STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY,

Defendant(s).

The following papers read on this motion:

Notice of Motion/ Order to Show Cause.....	1-5
Notice of Cross Motion.....	6-9
Answering Affidavits.....	10-12
Replying Affidavits.....	13,14
Sur-Reply.....	15-18

Upon the foregoing papers, it is ordered that this motion by plaintiff-assignee for an order pursuant to CPLR § 3212 granting summary judgment in favor of plaintiff and cross-motion by defendant for an order severing the first cause of action from the remainder of the lawsuit and remanding the case to District Court pursuant to CPLR § 325(d) and for an order pursuant to CPLR § 3212(b) granting summary judgment to defendant or for an order pursuant to CPLR § 3212(e) & (g) granting partial summary judgment to defendant deeming the additional verification requests timely and valid, are determined as hereinafter provided.

Since the filing of the above motion and cross-motion the plaintiff-assignee has withdrawn its second cause of action. Accordingly, that portion of defendant's cross-motion which seeks a severance is denied as moot.

The first cause of action arises out of an automobile accident that occurred on September 21, 2008. As a result of said occurrence, plaintiff-assignor Rafael Claudio, was hospitalized at Richmond University Medical Center from September 21 through September 26, 2008. On October 22, 2008, plaintiff-assignee billed the defendant with a Hospital Facility Form (Form NF-5), UB-92 Form and NYS Form NF-AOB for payment of a hospital bill in the amount of \$14,077.80. Defendant received said documents on October 24, 2008. On the NYS Form NF-AOB plaintiff-assignee stated that plaintiff-assignor Rafael Claudio's signature was "on file." More specifically, plaintiff-assignee states that plaintiff-assignor was too severely injured to sign the assignment and his wife therefore signed the assignment. On November 12 and December 16, 2008, defendant mailed verification requests to plaintiff which included an assignment of benefits form that defendant requested plaintiff complete. Plaintiff-assignee claims that it never received the verification request from defendant.

Plaintiff moves for summary judgment pursuant to CPLR § 3212 on the grounds that defendant failed to either pay the hospital bill or issue a denial form as required by Insurance Law § 5106(a) (*Presbyterian Hospital in the City of New York v Maryland Cas. Co.*, 90 NY2d 274, *rearg den.* 90 NY2d 937). Defendant cross moves for summary judgment pursuant to CPLR § 3212 on the grounds that plaintiff-assignee's failure to respond to defendant's verification requests for a proper assignment of benefits makes the instant action premature and summary judgment dismissing the complaint is appropriate [*Doshi Diagnostics Imaging Servs. v Progressive cas. Ins. Co.*, 12 Misc3d 144(A) (App. Term 2nd Dept. 2007)]. In the alternative, defendant cross moves for partial summary judgment pursuant to CPLR § 3212(e) & (g) requesting that the Court make findings that the additional verification requests are timely and valid [*State Farm Mut. Auto Ins. Co. v Crete Carrier Corp.*, 12 Misc3d 128A (App. Term 2nd Dept. 2006)].

A provider of medical services can establish a prima facie case showing of entitlement to summary judgment by submitting admissible proof that the requisite claim forms were mailed and received by the carrier and that payment is overdue [Insurance Law § 5106(a); *New York & Presbyterian Hospital v Countrywide Insurance Co.*, 44 AD3d 729; *Westchester Medical Center v Liberty Mutual Insurance Co.*, 40 AD3d 981]. 11 NYCRR 65-3.8(a)(1) states, in

relevant part, that no-fault benefits are overdue if not paid within 30 calendar days after the insurer receives proof of claim. If an insurer seeks additional verification, however, the 30-day window is tolled [11 NYCRR 65-3.8(a)(1)]. In a no-fault insurance context, an assignment form stating that a patient's signature is on file satisfies the claimant's notice burden where the carrier does not take timely action to verify the existence of a valid assignment (*Hospital for Joint Diseases v Travelers Property Casualty Insurance Co.*, 9 NY3d 312).

As evidenced by the annexed copies of the dated postal receipt and signed return receipt card, plaintiff-assignee has established its prima facie entitlement to summary judgment as a matter of law. However, the defendant raised a triable issue of fact based on the submitted affidavits which were sufficient to establish that its verification form seeking a proper assignment of benefits were timely mailed in accordance with defendant's standard office practice and procedure designed to ensure that items are properly addressed and mailed (*St. Vincent's Hospital of Richmond v Government Employees Ins. Co.*, 50 AD3d 1123). Accordingly, plaintiff's motion for summary judgment is denied.

Since plaintiff-assignee has yet to provide defendant with an assignment of benefits executed by the plaintiff-assignor, the 30-day statutory period in which defendant has to pay the claim has been tolled ([*New York Hosp. Med. Ctr. of Queens v Country-Wide Ins. Co.*, 295 AD2d 583; *Doshi Diagnostic Imaging Servs. v Progressive Ins. Co.*, 12 Misc3d 144(A) (App. Term 2nd Dept. 2007)]). Consequently, defendant has established that payment of no-fault benefits is not overdue and that the action is premature (*Central Suffolk Hosp. v New York Cent. Mut. Fire Ins. Co.*, 24 AD3d). Plaintiff-assignee's argument regarding the validity of the assignment of benefits form submitted to defendant is without merit. Accordingly, cross-motion of defendant for summary judgment is granted.

Dated: NOV 04 2009

W. J. [Signature]
ENTERED

NOV 09 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**