

SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 15**

**Present: HON. WILLIAM R. LaMARCA
Justice**

**ST. JOHN'S HOSPITAL-CARITAS HEALTH CARE
a/a/o BLANCA MINCHALA; THE NEW YORK AND
PRESBYTERIAN HOSPITAL a/a/o THELMA RAIDER**

**Motion Sequence #1, #2
Submitted October 14, 2008**

Plaintiffs,

-against-

INDEX NO: 008427/08

ALLSTATE INSURANCE COMPANY,

Defendant.

The following papers were read on these motions:

Notice of Motion.....	1
Notice of Cross-Motion.....	2
Reply and Opposition to Cross-Motion.....	3
Reply Affirmation.....	4

Relief Requested

Plaintiffs ST. JOHN'S HOSPITAL-CARITAS HEALTH CARE (hereinafter referred to as "ST. JOHN'S') a/a/o BLANCA MINCHALA, and THE NEW YORK PRESBYTERIAN HOSPITAL (hereinafter referred to as "PRESBYTERIAN") a/a/o THELMA RAIDER, move for an order, pursuant to CPLR §3212, granting them summary judgment against defendant, ALLSTATE INSURANCE COMPANY hereinafter referred to as " ALLSTATE

”), on the ground that ALLSTATE has failed to timely pay or deny forwarded no-fault hospital claims. ALLSTATE opposes the motion and cross-moves for an order, pursuant to CPLR §3212, granting it summary judgment against plaintiffs. The motion and cross-motion are determined as follows:

The Statute

11 NYCRR, Part 65, the regulations implementing the Comprehensive Motor Vehicle Insurance Reparations Act, commonly referred to as the No-Fault Law, provides that “No-Fault Benefits are overdue if not paid within 30 calendar days after the insurer receives proof of Claim...”. (11 NYCRR 65-3.8[a][1]). Within thirty (30) days of receiving a claim, the insurer is required to either pay or deny the claim in whole or in part (see, Insurance Law §5106[a]; 11 NYCRR 65-3.8 [c]). However, this thirty (30) day period may be extended by a timely demand by the insurance company for further verification of a claim (see, 11 NYCRR 65-3.5). Within 10 business days after receipt of the completed application for no fault benefits, the insurer must forward, to the parties required to complete them, the prescribed verification forms it will require prior to payment of the initial claim (see, 11 NYCRR 65-3.5[a]). If the demanded verification is not received within thirty (30) days, the insurance company must follow up within ten (10) calendar days of the claimant’s failure to respond, either by telephone call or mail (see, 11 NYCRR §65-3.6[b]); *New York Hospital Medical Center of Queens v State Farm Mutual Automobile Insurance Company*, 293 AD2d 588, 741 NYS2d 86 [2nd Dept. 2002]). As a complete proof of claim is a prerequisite to receiving no-fault benefits, a claim need not be paid or denied until all demanded verification is provided (see, 11 NYCRR 65-3.5[c]; *Montefiore Medical Center*

v New York Central Mutual Fire Insurance Company, 9 AD3d 354, 780 NYS2d 161 (2nd Dept. 2004); *New York & Presbyterian Hospital v American Transit Insurance Co.*, 287 AD2d 699, 733 NYS2d 80 (2nd Dept. 2001); *Hospital for Joint Diseases v Elrac, Inc.*, 11 AD3d 432, 783 NYS2d 612 (2nd Dept. 2004). Statutory interest and attorneys fees may be directed if payment is not timely made on a completed claim. See, Insurance Law § 5106(a), 11 NYCRR §65-3.9 and §3.10.

As to BLANCA MINCHALA

Plaintiff, ST. JOHN'S, is the assignee for health services rendered to BLANCA MINCHALA during the period from October 22, 2007 through October 23, 2007, arising out of an automobile accident that occurred on October 22, 2007. Plaintiff claims that it billed ALLSTATE with a Hospital Facility Form (Form N-F5) and a UB-92 on March 13, 2008, in the sum of \$3,344.10, by certified mail, which was received by ALLSTATE on March 14, 2008 or April 21, 2008. It is plaintiff's position that ALLSTATE failed to either pay the hospital bill or to issue a Denial of Claim Form. Plaintiff claims that the bill remains unpaid and that it is entitled to summary judgment.

In support of its cross-motion, counsel for ALLSTATE points out that plaintiff's billing agency, Hospital Receiveable Systems, Inc. (HRS), submits contradictory information as to when the bill was received by defendant and has not established when the bill became overdue. Moreover, an employee of ALLSTATE states that the bill was paid on April 16, 2008, and the check was cashed on April 12, 2008, prior to the commencement of this action and, therefore, the payment was not overdue and plaintiff is not entitled to attorney

fees.

Although movant claims that the check is not addressed to the correct facility, after a careful reading of the submissions herein, it is the judgment of the Court that the payment is clearly for the services rendered to MINCHALA and the Court is unable to find that plaintiff is entitled to additional sums on the claim or attorneys fees and interest, as a matter of law.

As to THELMA RAIDER

Plaintiff, PRESBYTERIAN, is the assignee for health services rendered to THELMA RAIDER during the period from February 26, 2008 through infirmary 29, 2008, arising out of an automobile accident that occurred on February 26, 2008. Plaintiff claims that it billed ALLSTATE with a Hospital Facility Form (Form N-F5) and a UB-92 on March 18, 2008, in the sum of \$12, 218.05, by certified mail, which was received by ALLSTATE on March 19, 2008. It is plaintiff's position that ALLSTATE failed to either pay the hospital bill or to issue a Denial of Claim Form. Plaintiff claims that the bill remains unpaid and that it is entitled to summary judgment.

In support of its cross-motion, counsel for ALLSTATE points out that ALLSTATE's employee, Joan Rolfe, asserts that ALLSTATE has no record of having received said bill and that plaintiff has failed to make a prima facie showing of entitlement to summary judgment because the only evidence of delivery is a partial Tack and Confirm statement which fails to confirm delivery of this bill to a specific address or party, citing *New York and Presbyterian Hospitals v. Allstate Ins. Co.*, 29 AD3d 547, 814 NYS 2d 687 (2nd Dept.

2006). Although plaintiff asserts that the Track and Confirm statement relates to THELMA RAIDER, the Court finds that questions of fact remain as to whether and when ALLSTATE received said bill and denies the motion and cross-motion for summary judgment as to THELMA RAIDER.

Conclusion

Based on the foregoing, it is hereby

ORDERED, that plaintiff's motion for summary judgment on the first cause of action with respect to BLANCA MINCHALA is denied and ALLSTATE's cross-motion for summary judgment dismissing the complaint is granted; ; and it is further

ORDERED, that plaintiff's motion for summary judgment on the second cause of action with respect to THELMA RAIDER, and ALLSTATE's cross-motion for the same relief are denied; and it is further

ORDERED, that, on the second cause of action, the parties shall appear for a Preliminary Conference on March 16, 2009, at 9:30 A.M. in the Differentiated Case Management part (DCM) at 100 Supreme Court Drive, Mineola, New York, to schedule all discovery proceedings. A copy of this order shall be served on all parties and on DCM Case Coordinator Richard Kotowski. **There will be no adjournments**, except by formal application pursuant to 22 NYCRR § 125.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: January 9, 2008



WILLIAM R. LaMARCA, J.S.C.

TO:

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ENTERED
JAN 23 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE