

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

PART 10

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MARY IMMACULATE HOSPITAL-CARITA
HEALTH CARE, a/a/o RAPHAEL ALVARENGA,
SHANTIE KHAN; THE NEW YORK AND
PRESBYTERIAN HOSPITAL, a/a/o HANZHU
HUANG, KEVIN JOFAT; RICHMOND
UNIVERSITY MEDICAL CENTER, a/a/o
KIMAR BOWERS,

INDEX NO. 21361/08

MOTION DATE: 4/2/09
SEQUENCE NO. 001, 002

Plaintiffs,

-against-

COUNTRY WIDE INSURANCE COMPANY,

Defendant.

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Notice of Motion, Affs. & Exs.....	<u>1</u>
Notice of Cross-Motion, Affs. & Exs.....	<u>2</u>
Reply & Opposition & Exs.....	<u>3</u>

Upon the foregoing papers, it is ordered that the motion by plaintiff Mary Immaculate a/a/o Rafael Alvarenga is denied. The cross-motion by defendant for summary judgment dismissing this claim without prejudice as premature is granted.

In this cause of action, the patient/assignor was injured in a motor vehicle accident on August 10, 2008. Plaintiff submitted the claim to defendant on October 16, 2008 for \$7,564.31 and alleges that no denial or payment was issued.

In opposition, defendant alleges there are two outstanding verification requests, thus defendant is "under no obligation to issue a denial for this claim" (*Hospital for Joint Diseases v. Elrac*, 11 AD 2d 432 (2nd Dept., 2004)).

In support of proof of the mailing of the verification requests, defendant submits the affidavit of Eric Lyons, defendant's No Fault Litigation Supervisor who asserted personal knowledge of "facts creating a presumption" of mailing of the two verifications (*Colonia Medical P.C. v. Travelers Ins. Co.*, 12 Misc 3d 133A (App. Term, 9th & 10th JD, 2006)). Defendant has met their burden of demonstrating questions of fact regarding the verification requests precluding summary disposition in favor of plaintiff.

The branch of the motion by plaintiff Mary Immaculate a/a/o Shantie Khan is denied. The branch of the cross-motion by defendant for summary judgment on this claim is denied.

In the Mary Immaculate a/a/o Shantie Khan cause of action, the patient/assignor was injured in a motor vehicle accident on May 25, 2008. The parties are in dispute as to the date the claim for \$1,113,55 was received by defendant. Defendant rejected the defective claims as untimely.

Plaintiff argues that services were rendered from May 25, 2008 through May 26, 2008 and the Shantie Khan bill was received by defendant on August 18, 2008 within the 45-day allowable period and there was no denial sent addressing the 45-day defense to the claim.

Defendant argues that they received the bill on August 27, 2008 beyond the 30-day period after the May 25, 2008 accident and beyond the 45 days of the date of service (11 NYCRR 65.1.1). Defendant contends that they sent a timely denial stating the reason to be the failure to file within 30 days.

Neither party has demonstrated that the denial or the claims were served in a timely manner and both the motion and cross-motion are denied for this claim.

The branch of the motion by plaintiff Richmond University Medical Center a/a/o Kumar Bowers is denied. The branch of the cross-motion by defendant for summary judgment dismissing this claim is granted.

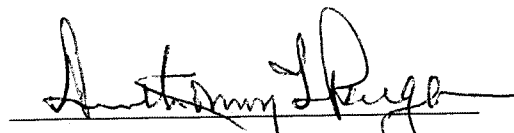
In this cause of action, the patient/assignor was injured in a motor vehicle accident on May 2, 2008. Plaintiff submitted the claim to defendant on October 8, 2008 for \$3,691.15. Plaintiff alleges that neither denial nor payment was received by plaintiff.

Plaintiff argues that Bowers, a pedestrian was struck by a car whose driver is unavailable. In opposition and support of this branch of the cross-motion for summary judgment defendant submits the affidavit of C. Moore, defendant's Underwriting Manager stating that "no contract of insurance exists between defendant insurer and the above named individual" - (driver of the car). Affiant Moore searched defendant's files and databases by accident date, vehicle and Bowers' name. Defendant has met its burden of specifically explaining the basis for coverage denial (*Lumberman Mut. Cas. Co. V. Quintero*, 305 AD2d 684 (2nd Dept., 2003)).

The claims of New York and Presbyterian Hospital a/a/o Hanzhu Huang and Kevin Jofat have been settled.

The parties shall appear for a Preliminary Conference on July 15, 2009, at 9:30 A.M. in the Differentiated Case Management Part ("DCM"), Nassau County Supreme Court, to schedule all discovery proceedings. A copy of this order shall be served on DCM Case Coordinator Richard Kotowski.

Dated: May 28, 2009.



Anthony L. Parga, J.S.C.

ENTERED

JUN 01 2009

NASSAU COUNTY
COUNTY CLERK'S OFFICE