

**MEMORANDUM DECISION**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. MARVIN E. SEGAL,  
Justice.**

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**IAS PART 5  
NASSAU COUNTY**

**THE NEW YORK AND PRESBYTERIAN  
HOSPITAL, a/a/o VINCENT HONAN;  
WESTCHESTER MEDICAL CENTER, a/a/o  
KHURRUM SHAKIR; ST. VINCENT'S  
HOSPITAL OF RICHMOND, a/a/o  
WILLIAM FORMICA,**

**Plaintiff(s),**

**INDEX NO.: 8530/01  
MOTION DATE: 03/01/02  
MOTION NOS.: 01, 02**

**- against -**

**PROVIDENCE WASHINGTON INSURANCE  
COMPANY,**

**Defendant(s).**

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The motion brought by the Plaintiffs and the cross-motion of the Defendant, in the above-captioned action, both of which motions seek an Order of this Court, pursuant to Rule 3212 of the CPLR, granting summary judgment in favor of the respective movants are determined as set forth herein below.

The Plaintiff hospitals, as assignees of three (3) patients whose no-fault

medical claims are unpaid and overdue, bring the instant action to recover unpaid hospital bills, statutory interest and attorney's fees pursuant to Insurance Law Section 5106 (a).

The Defendant, **PROVIDENCE WASHINGTON INSURANCE COMPANY**, cross-moves for summary judgment averring that the Plaintiff's proofs of claim are incomplete and that the Plaintiffs in the First and Second Causes of Action received and accepted payment in full satisfaction of their respective claims.

Under the insurance regulations, an insurer shall "pay or deny" any no-fault claim within thirty (30) calendar days after proof of claim is received (11 NYCRR Section 65.16 [g] [3]). And, any additional required verification "shall be requested within 10 business days of receipt of the prescribed forms" (11 NYCRR Section 65.15 [d] [2]). The Plaintiffs aver that with respect to the assigned claims of **VINCENT HONAN, KHURRUM SHAKIR and WILLIAM FORMICA**, the Defendant, **PROVIDENCE WASHINGTON INSURANCE COMPANY**, failed to pay or deny same within the requisite time period.

The Defendant, **PROVIDENCE WASHINGTON INSURANCE COMPANY**, cross moves to dismiss averring that Plaintiffs failed to comply with "a prerequisite to entitlement to no-fault benefits" (Interboro General Hospital v.

Allcity Ins. Co., 149 AD2d 569, 570, app dsmd 74 NY2d 792). **PROVIDENT WASHINGTON INSURANCE COMPANY** avers that all three (3) applicants failed to complete the required NF-5 forms (See, 11 NYCRR Section 65.15 [d] [6]) and that the spaces provided on the form for the applicant's signature verifying the form's accuracy are not signed by the insured, and that with respect to the claim of **VINCENT HONAN**, the Plaintiff, **THE NEW YORK AND PRESBYTERIAN HOSPITAL**, was paid the sum of \$17,288.20 and that the said Plaintiff accepted the said sum in full satisfaction of the subject claim and that with respect to the claim of **KHURRUM SHAKIR**, the Plaintiff, **WESTCHESTER MEDICAL CENTER**, was paid the sum of \$8,869.93 and that the said Plaintiff accepted the said sum in full satisfaction of the subject claim.

Summary judgment relief may be granted only when it is clear that no triable issue of fact exists. Alvarez v. Prospect Hosp., 68 NY2d 320, 325 (1986). The burden is upon the moving party to make a prima facie showing that he or she is entitled to summary judgment as a matter of law. Zuckerman v. City of New York, 49 NY2d 557, 562 (1980); Friends of Animals, Inc. v. Associated Fur Mfrs., Inc., 46 NY2d 1065, 1067 (1979). A failure to make such a prima facie showing requires a denial of the summary judgment motion regardless of the sufficiency of the opposing papers. Ayotte v. Gercasio, 81 NY2d 1062, 1063 (1993). If a prima facie showing

has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact. Alvarez, supra; Zuckerman, supra. Although the papers submitted in support of and in opposition to a summary judgment motion must be examined in a light most favorable to the party opposing the motion. (Martin v. Briggs, 235 AD2d 192, 196 [1<sup>st</sup> Dep't 1997]), mere conclusions, unsubstantiated allegations or expressions of hope are insufficient to defeat a summary judgment motion. Zuckerman, supra, at 562. Upon the completion of the Court's examination of all documents submitted in connection with a summary judgment motion the motion must be denied if there is any doubt as to the existence of a triable issue. Rotuba Extruders, Inc. v. Ceppos, 46 NY2d 223, 231 (1978).

Based upon all the papers submitted for this Court's consideration, the Court makes the following findings of fact:

1. On March 5, 2001, the Plaintiff, **THE NEW YORK AND PRESBYTERIAN HOSPITAL**, billed the Defendant, **PROVIDENCE WASHINGTON INSURANCE COMPANY**, in the amount of \$17,288.20 with a Hospital Facility Form (Form N-F 5) and a UB-92, for no-fault payment of health services rendered by the Plaintiff to **VINCENT HONAN** during the period December 4, 2000 through December 11, 2000, purportedly arising out of an

automobile accident on December 4, 2000;

2. The aforesaid billing was mailed Certified Mail, Return Receipt Requested, and was received by the Defendant on March 8, 2001;

3. The Defendant did not pay the said bill or issue a Denial Claim Form with respect thereto within a period of thirty (30) days of March 8, 2001;

4. The Defendant paid the Plaintiff the sum of \$17,288.20 on June 25, 2001;

5. On February 28, 2001, the Plaintiff, **WESTCHESTER MEDICAL CENTER**, billed the Defendant, **PROVIDENCE WASHINGTON INSURANCE COMPANY**, in the amount of \$8,869.93, with a Hospital Facility Form (Form N-F5) and a UB-92, for no-fault payment of health services rendered by the Plaintiff to **KHURRUM SHAKIR** during the period October 6, 2000 through October 27, 2000, purportedly arising out of an automobile accident on October 6, 2000;

6. The aforesaid billing was mailed First Class Mail and Certified Mail, Return Receipt Requested and was received by the Defendant on or about March 5, 2001;

7. The Defendant did not pay the said bill within a period of thirty (30) days of March 5, 2001;

8. On March 5, 2001, the Defendant mailed a Denial of Claim Form to

the Plaintiff's attorney;

9. The Defendant paid the Plaintiff the sum of \$5,775.00 on May 8, 2001;

10. On November 1, 2000, the Plaintiff, **THE ST. VINCENT'S HOSPITAL OF RICHMOND**, billed the Defendant, **PROVIDENCE WASHINGTON INSURANCE COMPANY**, in the amount of \$838.62, with a Hospital Facility Form (Form N-F 5) and a UB-92, for no fault payment of health services rendered by the Plaintiff to **WILLIAM FORMICA** during the period September 1, 2000 through September 2, 2000, purportedly arising out of an automobile accident on September 1, 2000;

11. The aforesaid billing was mailed First Class Mail and Certified Mail, Return Receipt Requested and was received by the Defendant on or about November 6, 2001; and

12. The Defendant did not pay the said bill or issue a Denial Claim Form with respect thereto within a period of thirty (30) days of November 6, 2001

11 NYCRR 65.15 (d) (6) provides as follows:

“In lieu of a prescribed application for motor vehicle no-fault benefits submitted by an applicant and a verification of hospital treatment (NYS Form N-F 4), an insurer shall accept a completed hospital facility form (NYS Form

N-F 5) or an N-F 5 and Uniform Billing Form (UBF-1) which together supply all the information requested by the N-F 5 submitted by a provider of health services with respect to the claim of such provider.”

With respect to the Defendant’s claim that the Plaintiffs’ proofs of claim were incomplete, the Appellate Division, Second Department has spoken in St. Clare’s Hospital v. Allcity Insurance Company, 201 AD2d 718 at pg. 720:

“As to the Defendant’s contention that the claim is deficient and lacking sufficient specificity, 11 NYCRR 65.15 (d) provides that the insurer may, within 10 days upon receipt of the claim, seek verification. This was not done in the instant matter and the defendant may not now claim that the NF-5 and UBF-1 forms required by the statute were deficient.”

Accordingly, the Defendant herein, not having sought the statutorily provided for verification, is now precluded from objecting to the sufficiency of the Plaintiff’s billing.

Therefore, this Court determines as a matter of law that with respect to the Plaintiffs’ First Cause of Action, the Defendant having failed to either timely pay the subject hospital bill or issue a Denial of Claim Form the Plaintiff, **THE NEW YORK AND PRESBYTERIAN HOSPITAL** is awarded statutory interest to the date of the herein above described payment and attorney’s fees. See, Hempstead

General Hospital v. Ins. Co. of North America, 208 AD2d 510.

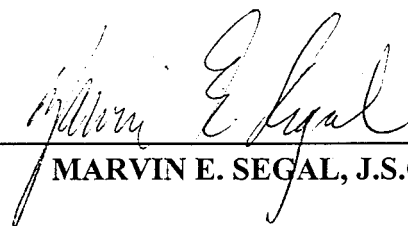
With respect to the Second Cause of Action, the Defendant having timely served a Denial of Claim Form there exist material issues of fact that preclude summary judgment.

With respect to the Third Cause of Action, this Court determines as a matter of law, the Defendant having failed to either timely pay the subject hospital bill or issue a Denial of Claim Form the Plaintiff, **ST. VINCENT'S HOSPITAL OF RICHMOND**, is awarded, pursuant to Insurance Law Section 5106 (a), the sum of \$838.62 plus statutory interest and attorney's fees.

Summary judgment having been denied with respect to the Second Cause of Action set forth in the Plaintiffs' Verified Complaint, the Second Cause of Action is herewith severed and judgment is awarded to the Plaintiff on the First and Second Causes of Action as set forth herein above.

Submit Judgment on Notice.

Dated: March 7, 2002

  
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MARVIN E. SEGAL, J.S.C.

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