

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. PETER B. SKELOS,
Justice.

TRIAL/IAS PART 20
NASSAU COUNTY

LENOX HILL HOSPITAL, a/a/o ROBERT MOODY;
ST. VINCENT'S HOSPITAL OF RICHMOND, a/a/o
THOMAS MCCARTHY; MOUNT SINAI HOSPITAL
OF QUEENS, a/a/o BETTY R. COFFRINI;
NYACK HOSPITAL, a/a/o HARRY KIRK;
ST. VINCENT'S HOSPITAL & MEDICAL CENTER,
a/a/o IVETTE MARTINEZ,

Plaintiffs,

-against-

MOTIONS # 01, 02
INDEX # 1669/03

GOVERNMENT EMPLOYEES INSURANCE
COMPANY,

Defendant.

The following papers read on this motion:

Notice of Motion/Order to Show Cause.....1
Cross Motion/Answering Affidavits.....2,3
Reply Affidavits.....4,5

In this action on behalf of numerous hospitals seeking no-fault benefits from Government Employees Insurance Company ("GEICO"), the second, third, fourth and fifth causes of action have been withdrawn. In the remaining first cause of action, plaintiff Lenox Hill Hospital ("Lenox Hill") moves for summary judgment and an order directing GEICO to make certain payments under the no-fault policy issued to Robert Moody. Plaintiff contends that defendant has failed to act in accordance with Insurance Law 5706(a) which requires timely payment or denial of requests for no-fault benefits. Defendant cross-moves for summary

judgment based on lack of coverage. For the reasons that follow, the motion is denied and the cross-motion granted.

Robert Moody was hospitalized at Lenox Hill from June 14, 2002 through August 14, 2002 following an automobile accident on June 14, 2002. On November 8, 2002 plaintiff submitted forms NF-5 and UB-92 to GEICO for payment of no-fault benefits in the amount of \$125,222.92. The bill in question was received by GEICO on November 12, 2002 and Lenox Hill alleges that defendant neither paid nor denied the claim within 30 days of the application.

Defendant argues that Mr. Moody's hospitalization resulted from an organic condition, specifically a stroke, and was not the consequence of a motor vehicle accident. To support this contention GEICO refers to the no-fault benefit application signed by Mr. Moody which clearly that patient lost control of the car "due to high blood pressure." He describes the injury he suffered as a "cerebral bleed." Defendant should clearly be able to rely on this admission. Consideration of the Police Accident Report, an official record made in the course of official police business, is also appropriate. That contemporaneous report attributes the accident to Mr. Moody's "high blood pressure which caused him to lose control of his vehicle."

While these laymen opinions alone might not be sufficient to establish the coverage defense, they are supported by medical evidence appropriately considered. These records were supplied by plaintiff's counsel by letter dated September 19, 2003 and allegedly constitute plaintiff's "complete medical records" from his Lenox Hill hospitalization. They contain numerous references by Mr. Moody's treating physicians to a pre-accident organic medical

condition. Dr. Megan Bartsch writes of a “neuro deficit contributing to MVA.” The emergency room records indicate that the patient complained of increasing headache during the day “and subsequently drove his car into two parked vehicles.” Progress notes from the next day suggest that Mr. Moody suffered from a “hemorrhagic stroke.” With regard to the car accident, the reporting doctor found zero traumatic injuries.” Mr. Moody’s progress notes from the afternoon of June 15, 2002 indicate that an MRV study was performed “and is suggestive of partial obstruction of L transverse sinus.” There is no indication in the medical records that Mr. Moody’s condition was the result of the car accident.

This conclusion was echoed in the independent audit performed by Kate McEnery, a Registered Health Information Technician employed by GENEX. She avers in an affidavit that the attending physician did not attribute the hemorrhagic stroke that occasioned the hospitalization to a traumatic cause.” She also reaffirmed in an earlier report to the carrier in which she concluded “[t]here was no documentation in the records provided for review to support a traumatic cause for the cerebral hemorrhage that occasioned the admission of the claimant.”

In an affidavit dated November 7, 2003, the GEICO no-fault claims supervisor assigned to the file avers that she forwarded the medical records received from plaintiff “to an independent neurosurgeon for review.” The duly affirmed medical report of Dr. Allen G. Zippen dated October 29, 2003 provides his analysis of the hospitalization records. He concludes based on the documentation that Mr. Moody “had a stroke prior to his motor vehicle

accident, which resulted in the motor vehicle accident.” He provided detailed medical reasons coupled with the fact that “[t]here was no evidence of head trauma.”

The court determines that GEICO’s denial of claim dated April 9, 2003, some five months after the initial payment request, was effective in asserting a lack of coverage defense. As the Court of Appeals stated in *Central General Hospital v Chubb Group*, 90 NY2d 195, “We are persuaded that an insurer, despite its failure to reject a claim within the 30-day period...may assert a lack of coverage defense premised on the fact or founded belief the alleged injury does not arise out of the insured accident.” The basis for GEICO’s founded belief in this instance was the no-fault benefit request itself and the police report. GEICO thereafter satisfied its evidentiary burden of establishing the foundation for its belief “that the patient’s treated condition was unrelated to his. . . automobile accident” (*Mount Sinai Hospital v Triboro Coach, Inc.*, 263 AD2d 11, 19.)

Accordingly, the motion is denied, the cross-motion is granted and the matter shall be marked disposed.

Dated: April 22, 2004

ENTERED

APR 26 2004

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COUNTY CLERK'S OFFICE


PETER B. SKELOS, J.S.C.