

Radiology Today P.C. v Allstate Ins. Co. (2006 NYSlipOp 50472(U))

Decided on March 27, 2006

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE TERM: 2nd and 11th JUDICIAL DISTRICTS

PRESENT: : PESCE, P.J., WESTON PATTERSON and
GOLIA, JJ 2005-377 K C. NO. 2005-377 K C

Radiology Today P.C. A/A/O JOSE PEREZ, Appellant,

against

Allstate Insurance Company, Respondent.

Appeal by plaintiff from so much of an order of the Civil Court of the City of New York, Kings County (Eileen Nadelson, J.), entered January 12, 2005. The order, insofar as appealed from, denied plaintiff's motion for summary judgment.

Order, insofar as appealed from, reversed without costs, plaintiff's motion for summary judgment granted and matter remanded to the court below for a calculation of statutory interest and an assessment of attorney's fees.

In this action to recover assigned first-party no-fault benefits, plaintiff established its prima facie entitlement to summary judgment by showing that it submitted a completed proof of claim, setting forth the fact and the amount of the loss sustained, and that payment of no-fault benefits was overdue (*see* Insurance Law § 5106 [a]; *Mary Immaculate Hosp. v Allstate Ins. Co.*, 5 AD3d 742 [2004]; *Amaze Med. Supply v Eagle Ins. Co.*, 2 Misc 3d 128 [A], 2003 NY Slip Op 51701[U] [App Term, 2d & 11th Jud Dists]). The burden then shifted to defendant to show a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]).

Defendant cross-moved for summary judgment. Its claims representative stated in an affidavit that the bill was received on May 1, 2002 and denied on June 4, 2002.

Since the defendant did not deny the claim within the 30-day prescribed period, it is precluded from raising most defenses (*see Central Gen. Hosp. v Chubb Group Ins. Cos.*, 90 NY2d 195 [1997]; *Presbyterian Hosp. in City of N.Y. v Maryland Cas. Co.*, 90 NY2d 274, 282 [1997]), including its defense that the bill was not received within 180 days of service as required under the regulations in effect at the time (11 NYCRR 65.11 [m] [3]; *cf. Ocean Diagnostic Imaging P.C. v GMAC Ins.*, 7 Misc 3d 138[A], 2005 NY Slip Op 50865 [App Term, 2d & 11th Jud Dists]).

Accordingly, plaintiff's motion for summary judgment is granted and the matter remanded for the calculation of statutory interest and an assessment of attorney's fees pursuant to Insurance Law § 5106 and the regulations promulgated thereunder.

Pesce, P.J., and Weston Patterson, J., concur.

Golia, J., concurs with the result only, in the following memorandum:

While I agree with the ultimate disposition in the decision reached by the majority, I wish to emphasize that I disagree with certain propositions of law set forth in cases cited therein which are inconsistent with my prior expressed positions and generally contrary to my views.

It should be noted that between the submission by the plaintiff and the defendant there are no less than three (3) NF-10 denial forms attributable to the defendant, and not one of them is clearly referable to the NF-3 claim form submitted.

Although all three appear to address the same two MRI "treatment" of September 24, 2001 and October 11, 2001, they each indicate different dates of billing; different dates of receipt; and different names for the provider. What is even more disconcerting is that the affirmation of defendant's counsel sets forth that these denials were issued more than 30 days from receipt of the claim. I note that in one instance, it

was sent merely one day "late" and that the 30th day was a Sunday. Therefore, under the normal rules of statutory interpretation, it was, in fact, a timely response. Why the defendant failed to point that out is a mystery. I am also mystified as to why the defendant would be unable to easily meet the 30 day deadline given that the ground for denial is that the claim was not filed within the 180 day time period allotted to the claimant.

I am also at a loss to understand why defendants persist in their failure to clearly and unequivocally meet even the simplest of burdens placed upon them by regulations and the courts. These would include proof of mailing, timely and specific denials, timely requests for verifications, and objections to assignments, timely follow-up requests for independent medical examinations, etc.

Decision Date: March 27, 2006