

DISTRICT COURT OF NASSAU COUNTY  
FIRST DISTRICT CIVIL PART 2

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NORTH SHORE CRANIOFACIAL CARE, P.C.,

Plaintiff(s)

INDEX NO. CV-006696-16

Present:

against

HON. ROBERT E. PIPIA

STATE FARM MUTUAL AUTO INS. CO.,

Defendant(s)  
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The following named papers numbered 1 to 6  
submitted on this motion on September 14, 2016

	papers numbered
Notice of Motion (with Exhibit A)	1
Exhibits B-F	2
Exhibit G	3
Exhibits H-K	4
Affirmation in Opposition to Defendant's Motion	5
Reply Affirmation	6

Before this court is defendant's motion seeking summary judgment in the captioned No-Fault case. Said motion is decided as provided below.

The "drastic remedy" of summary judgment is appropriate only where there is no doubt as to the nonexistence of a triable issue of fact (*see Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). It is the movant's burden to establish *prima facie* entitlement to judgment as a matter of law, tendering evidence in admissible form sufficient to eliminate any material issues of fact (*Winegrad v New York Univ Med Cen.*, 64 NY2d 851, 853 [1985]). Once the movant has made such a showing, the burden then shifts to the opposing party to produce evidentiary proof in admissible form demonstrating the existence of triable issues of fact (*Zuckerman v City of New York*, 49 NY2d 557 [1980]). Furthermore, "**where, as here, an insurer has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease**" (*Presbyterian Hospital in the City of New York v Liberty Mutual Insurance Company*, 216 AD2d 448[2d Dept 1995]; *Hospital for Joint Diseases v Hertz Corporation*, 22 AD3d 724, 725 [2d Dept 2005] [emphasis added]).

In support of its motion, defendant has submitted an affidavit by Michael Bellamy, plaintiff's Administrative Services Mailroom Services Assistant. Mr. Bellamy maintains that he has personal knowledge of defendant's mailing practices and procedures and explains the same.

Defendant has also provided the affidavit of Monica Bradley, its Claim Representative, which outlines the procedures to ensure that the explanation of medical bill payment is timely and properly mailed. She exhaustively addresses each of the 116 bills at issue, and details when each explanation of payment or denial was printed and mailed. She also addresses the numerous claims which make up the alleged unpaid medical bills that are the basis for this action, and the dates on which each claim was received, partially paid, or timely denied. Ms. Bradley further asserts that the policy at issue provides for \$50,000.00 in coverage, and that said amount has been exhausted. Defendant supports this conclusion by providing: a copy of the denials regarding policy exhaustion (Exhibit D); defendant's payment log (Exhibit E); a copy of the subject policy of insurance (Exhibit F); date-specific denials with explanation for same (Exhibit G); and a copy of defendant's cancelled checks (Exhibit H).

Hence, defendant has established a *prima facie* showing of its entitlement to summary judgment based upon the ground that the policy under which plaintiff seeks benefits has been exhausted. The burden now shifts to plaintiff to rebut defendant's *prima facie* showing.

However, plaintiff's opposition is insufficient to defeat defendant's summary judgment motion, as it consists solely of counsel's affirmation on the issue of whether policy limits were exhausted (*see Zuckerman v City of New York*, 49 NY2d 557, *supra*; *see also Ontario Medical, P.C. v Sea Side Medical, P.C.*, 15 Misc 3d 129[A] [App Term, 9th & 10th Jud Dists 2007]). Moreover, contrary to counsel's contention, defendant is not precluded from paying other legitimate claims subsequent to the denial of plaintiff's claims. Requiring a defendant to delay payment on uncontested claims pending the resolution of a disputed claim "runs counter to the no-fault regulatory scheme, which is designed to promote prompt payment of legitimate claims" (*Nyack Hosp. v General Motors Acceptance*

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Corp., 8 NY3d 294, 300 [2007]).

Simply stated, defendant has made an affirmative showing of entitlement to summary judgment. In opposition, plaintiff has failed to raise any issue as to the merits of the underlying motion. Therefore, defendant's motion is granted, and plaintiff's complaint is dismissed.

So Ordered:

  
DISTRICT COURT JUDGE

Dated: **NOV 22 2016**

CC: Nicolini, Paradise, Ferretti & Sabella  
Baker Sanders LLC

REP:blm