

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
WESTCHESTER MEDICAL CENTER, As Assignee of
WINIFRED SWIRLING, SHARON PONSOLLE,
WILLIAM FOSTER; NEW YORK UNIVERSITY
HOSPITAL-TISCH INSTITUTE, As Assignee of
ALEXANDER GITELMAN; MONTEFIORE
MEDICAL CENTER, As Assignee of EVELYN
ALERS; ST. VINCENT'S HOSPITAL OF RICHMOND,
As Assignee of JAMES FORBES; THE NEW YORK
HOSPITAL MEDICAL CENTER OF QUEENS, As
Assignee of LARISA KUSHMAKOVA,

**NOTICE OF
CROSS MOTION**

Index No. 01/008695

Plaintiffs,

Return Date: 1/22/2002

-against-

Assigned to:
Honorable Ralph P. Franco

TRAVELERS PROPERTY CASUALTY INSURANCE
COMPANY,

Defendant.

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S I R S :

PLEASE TAKE NOTICE that upon the annexed affirmation of JEENA R. BELIL, affirmed the XXst day of January, 2002, the exhibits annexed hereto, and all of the pleadings and proceedings heretofore had herein, the undersigned will cross-move this Court, before Honorable Ralph P. Franco, at the courthouse located at 100 Supreme Court Drive, Mineola, New York, on the 22nd day of January, 2002, at 9:30 o'clock of the forenoon of that day or as soon thereafter as counsel may be heard, for an order

1. Dismissing the Plaintiff's Complaint for its failure to state a cause of action upon which relief may be granted pursuant to CPLR § 3211(a)(7); and
2. Awarding Summary Judgment in favor of the defendant on all causes of action pursuant to CPLR § 3212; and
3. Awarding Costs against Plaintiff's counsel for bringing frivolous actions; and

4. For such other and further relief as to the Court seems just and proper.

PLEASE TAKE FURTHER notice, that, pursuant to CPLR 2214(b), answering papers, if any, are to be served at least seven (7) days prior to the return date of this motion and twelve (12) days if served by mail.

Dated: Melville, New York
January xx, 2002

Yours, etc.

JEENA R. BELIL, ESQ.
PETER J. CREEDON & ASSOCIATES
Attorneys for Defendant
TRAVELERS PROPERTY CASUALTY INSURANCE
COMPANY
Office & P.O. Address
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Suite 102-S
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(631) 501-3000
Docket No.: 011460JRB

TO:
JOSEPH HENIG, P.C.
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
WESTCHESTER MEDICAL CENTER, As Assignee of
WINIFRED SWIRLING, SHARON PONSOLLE,
WILLIAM FOSTER; NEW YORK UNIVERSITY
HOSPITAL-TISCH INSTITUTE, As Assignee of
ALEXANDER GITELMAN; MONTEFIORE
MEDICAL CENTER, As Assignee of EVELYN
ALERS; ST. VINCENT'S HOSPITAL OF RICHMOND,
As Assignee of JAMES FORBES; THE NEW YORK
HOSPITAL MEDICAL CENTER OF QUEENS, As
Assignee of LARISA KUSHMAKOVA,

AFFIRMATION

Index No. 01/008695

Plaintiffs,

Return Date: 1/22/2002

-against-

Assigned to:
Honorable Ralph P. Franco

TRAVELERS PROPERTY CASUALTY INSURANCE
COMPANY,

Defendant.

-----X

JEENA R. BELIL, an attorney at law duly admitted to practice before the Courts of the State of New York, affirms the truth of the following upon information and belief and with knowledge of the penalties for perjury:

1. I am associated with the law firm of Peter J. Creedon & Associates, attorneys for Defendant TRAVELERS PROPERTY CASUALTY INSURANCE COMPANY (hereinafter "TRAVELERS") in the above matter. As such, I am fully familiar with the facts and circumstances hereof from reviewing the file hereon maintained in the aforesaid law offices.

2. This affirmation is submitted in support of the instant cross motion seeking an order:

1. Dismissing the Plaintiff's Complaint for its failure to state a cause of action upon which relief may be granted pursuant to CPLR 3211(a)(7); and
2. Awarding Summary Judgment in favor of the defendant on all causes of action pursuant to CPLR § 3212; and

3. Awarding Costs against Plaintiff's counsel for bringing frivolous actions; and
4. For such other and further relief as to the Court seems just and proper.

3. This is a multi-Plaintiff action seeking to recover **No-Fault Benefits** as a result of **various alleged automobile accidents**. The summons and complaint were served and issued was joined on August 6, 2001. A copy of plaintiffs' Complaint is annexed hereto as **"Exhibit A"**. A copy of TRAVELERS' verified answer is annexed hereto as **"Exhibit B"**.

FIRST CAUSE OF ACTION
WESTCHESTER MEDICAL CENTER
A/A/O WINIFRED SWIRLING

4. This claim was settled on December 7, 2001, between Ron Badchkam, Travelers' Technical Specialist and "Kathleen" of Plaintiff's attorney's office. Annexed hereto as **Exhibit "C"** is an affidavit of Mr. Badchkam indicating same. This settlement included a one-time filing fee charge of \$ 245.00 which would not be paid again if TRAVELERS is compelled to pay any other bills on any other matter in this lawsuit.

5. As Mr. Henig has, to date, failed to provide your affirmant, nor Travelers with a stipulation of discontinuance, it is respectfully requested that Costs be imposed on Mr. Henig for the time and effort of having to make a cross-motion on this action.

SECOND CAUSE OF ACTION
WESTCHESTER MEDICAL CENTER
A/A/O SHARON PONSOLLE

6. This matter has been withdrawn by Plaintiff. (See Plaintiff's Motion for summary judgment).

THIRD CAUSE OF ACTION
WESTCHESTER MEDICAL CENTER
A/A/O WILLIAM FOSTER

7. That this claim was paid timely and plaintiff's lawsuit was premature. Therefore, neither Plaintiff nor Plaintiff's counsel is entitled to interest payment or attorneys fees.

8. This claim was brought on behalf of Plaintiff WESTCHESTER MEDICAL CENTER for alleged services rendered to WILLIAM FOSTER. After TRAVELERS received the bill from Plaintiff on May 4, 2001, a request for further verification was timely issued to Plaintiff's attorney on May 14, 2001. (See request, annexed hereto as **Exhibit "D"**). This request included emergency room/medical records, updated medical reports, prognosis, and duration of treatment, narratives and operative reports, results of X-Rays and MRI's, admission and discharge summaries and test results. TRAVELERS did not receive the requested verification. Thereafter, on June 15, 2001, within the acceptable 40 day timeframe required by the No Fault Regulation TRAVELERS issued a second request for further verification asking for the same information. (See request, annexed hereto as **Exhibit "E"**). TRAVELERS did not receive the requested verification until December 6, 2001. The bill was then timely paid in full on December 8, 2001. See TRAVELERS' financial detail, annexed hereto as **Exhibit "F"**. As such, the Plaintiff is not entitled to interest, nor is Mr. Henig entitled to any statutory fees whatsoever.

9. To understand the issues herein, it is necessary to outline the applicable laws and time limitations applicable to the specific circumstances under which this suit has been commenced.

10. NYCRR §65.15(d)(2) reads as follows:

Subsequent to the receipt of one or more of the completed prescribed verification forms, any additional verification required by the insurer shall be requested within 10 business days of receipt of the prescribed verification forms. [Emphasis added].

The first request for additional verification was issued six (6) business days after receipt of the bill and prescribed verification form. This is well within the confines of the statute, and therefore the request is timely.

11. It is anticipated that Plaintiff's counsel will not only object to the timeliness of the requests for further verification, but also the form on which the information was requested. The statute at section 65.15(d)(2) contemplates the receipt of a prescribed verification form before a request for additional verification is made. The regulation at section 65.15(d)(2) makes no mention of the need to use, or even the existence of, a particular form for requests for additional verification (generally, these requests involve the need for medical records).

12. NYCRR §65.15(e)(2) states as follows:

Verification requests. At a minimum, *if any requested verification has not been supplied to the insurer 30 calendar days after the original request*, the insurer shall, *within 10 calendar days, follow up* with the party from whom the verification was originally requested either by a telephone call...or by mail.

In the instant matter, TRAVELERS did not receive the requested verification. The second request was issued thirty-three days after after the original request, again, within the parameters of the Regulation.

13. Again, the follow-up provision of the insurance regulation make no reference to a particular form to be utilized and even allows for the follow-up request to be made in the form of a telephone call.

14. NYCRR §65.15(g)(3) states as follows:

(g) *Payment or denial of claim (30-day rule)*. (1)(i) No-fault benefits are overdue if not paid *within 30 calendar days after the insurer received verification of all of the relevant information requested*.... [Emphasis added].

(3) Within 30 calendar days *after proof of claim is received*, the insurer shall either pay or deny the claim in whole or in part. [Emphasis Added].

Here, the requirement that a claim be paid or denied within 30 days is conditioned upon receipt of information requested by the insurer. In the case at bar, the payment was made well within the 30 day time allowance of the Regulation.

15. Annexed hereto as Exhibit “G” is an affidavit of Angela Abruzzino, Travelers Claim Representative, detailing her proper and timely handling of this claim.

16. Moreover, At the time of commencement of this action, the verification requested had not been received. As such, the time within which to pay or deny the plaintiff’s claim had not been triggered. As such, at the time of commencement of this action, the claim was not overdue, therefore, interest and attorneys fees are not due.

17. Based upon the foregoing, it is respectfully submitted that the plaintiff’s lawsuit was premature in that a lawsuit with regard to no-fault benefits cannot be commenced until such time as there is an **actual dispute** with regard to the payment of the benefits.

18. In light of the foregoing, it is respectfully submitted that the plaintiff was not entitled to commence an action against TRAVELERS nor is the plaintiff entitled to interest or attorneys fees with regard to this matter. See 11 NYCRR §65.15(h) entitled *Interest on overdue payments*. “All **overdue**...benefits due...shall bear interest at a rate of two percent per month....” Emphasis added. As indicated above, the benefits were not overdue in light of the fact that the time within which to pay or deny the claim(s) of the plaintiff was extended pending the receipt of further verification. As such, benefits that are not overdue do not incur interest.

19. Moreover, with regard to the payment of attorneys fees, 11 NYCRR §65.15(i) states as follows: “an applicant or an assignee shall be entitled to recover their attorney’s fees...if a valid claim or portion thereof **was denied or overdue.**” Again, the claim of the plaintiff was neither denied nor overdue.

20. Based upon the foregoing, neither attorney’s fees nor interest are due.

21. It is respectfully requested that Defendant be awarded reasonable costs for having to defend this frivolous claim.

FOURTH CAUSE OF ACTION
NEW YORK UNIVERSITY HOSPITAL –
TISCH INSTITUTE
A/A/O ALEXANDER GITELMAN

22. It is respectfully submitted that summary judgment be awarded on this cause of action, as ALEXANDER GITELMAN is not entitled to benefits as he is not a covered person under the insurance policy issued to GARY FARBEROU.

23. This is an action brought on behalf of plaintiff for payment of No-Fault benefits, interest and attorney fees for personal injuries allegedly sustained by Plaintiff's alleged assignor due a motor vehicle accident which occurred on the New Jersey Turnpike in the State of New Jersey on March 4, 2001.

24. Plaintiff allegedly submitted a bill in the amount of \$ 7,227.13 to the defendant, which was received on March 28, 2001. On April 10, 2001 TRAVELERS validly and timely notified the plaintiff, Mr. Henig and Plaintiff's assignor that the claim could not be processed until the receipt of necessary documentation, including emergency room/medical records, results of X-Rays and MRI's , for an application for benefits from Plaintiff's assignor and a hospital admission and discharge summary. See TRAVELERS' request for verification annexed hereto as **Exhibit "H"**. Said notification was sent to both the plaintiff and counsel for the plaintiff's alleged assignor within ten (10) business days of receipt of the bill, in compliance with the New York No Fault Regulation.

25. The documentation sought by TRAVELERS was received on April 16, 2001, and a denial was timely issued within 30 days of April 16, 2001, on April 24, 2001. The grounds for the denial were that Plaintiff's alleged assignor was not an eligible injured person under the policy of insurance he was claiming benefits under, as he was a passenger in the insured's motor vehicle when it was involved in an automobile accident which took place in New Jersey. Annexed hereto as **Exhibit "I"** is a copy of said

denial. Annexed hereto and made a part hereof as **Exhibit “J”** is an affidavit executed by Angela Abruzzino, the claims representative assigned to this file setting forth the above.

26. That the New York State No Fault Law §65.15(k)(iii) states, in pertinent part, as follows:

An applicant who is a named insured or a relative of a named insured...and who sustains a personal injury arising out of the use or operation of a motor vehicle outside of New York State, **shall institute the claim against the insurer of the named insured or the insurer of the relative....**

Emphasis Added.

27. Furthermore, the Mandatory Personal Injury Protection Endorsement of the policy issued to the plaintiff’s assignor contains the following provision:

Other Definitions:

When used in reference to this coverage: (g) “relative” means a spouse, child or other person related to the named insured by blood; marriage, or adoption...**who regularly resides in the insured’s household....**

Emphasis Added. A copy of the relevant portion of the Endorsement, which is part of the New York No Fault Regulation is annexed hereto and made a part hereof as **“Exhibit “K.”**

28. That according to the annexed police report (**Exhibit “L”**) Plaintiff’s assignor, ALEX GITELMAN was a passenger in the vehicle owned by TRAVELERS’ insured, GARY FARBEROU. The police report clearly indicates “New Jersey Police Accident Report” and states that the accident took place on the “NJ Turnpike Northbound” in the “Cranbury” Precinct. As the accident took place in New Jersey, New York State No Fault Law §65.15(k)(iii) would apply. Therefore, ALEX GITELMAN would have had to seek No Fault benefits through his own insurer or the insurer of a “resident relative”.

29. In light of the prevailing statutory law and the controlling policy provision, it is respectfully submitted that Defendant timely denied this claim based upon the fact that the Plaintiff’s alleged assignor is not an Eligible Injured Person under the policy

issued by Travelers. Based upon the foregoing, it is therefore respectfully submitted that no triable issue of fact exists.

30. Plaintiff's counsel may argue that the police report is not certified, and therefore should not be considered by this court, however, courts routinely consider police accident reports in determining information that does not go directly to the actual facts of the accident.

31. That in the Second Department in Eagle Insurance Company v. Olephant, 81 A.D.2d 886, 439 N.Y.S.2d 159, 160 (2nd Dep't. 1981), the Court stated that "the police report, [which indicates an insurance code]..., is sufficient to raise a triable issue of fact as to whether the aforesaid company insured the owner of the offending vehicle." The Court went on to state that the "burden would then shift to the insurance company `to come forward with some proof that it either did not insure the presenter or that it had followed the requisite procedure for cancellation.'" (439 N.Y.S.2d at 160).

32. Similarly in the present case, your affirmant is merely proving that the accident did, in fact, take place in New Jersey. The actual facts of the accident are not at issue.

33. As no No Fault coverage for ALEX GITELMAN, no triable issue of fact exists and the cross motion should be granted.

FIFTH CAUSE OF ACTION
MONTEFIORE MEDICAL CENTER
A/A/O EVELYN ALERS

34. As set forth in greater detail below, summary judgment should be granted to TRAVELERS as the treatment rendered by Plaintiff is not causally related to a motor vehicle accident.

Additionally, Mr. Henig is not entitled to attorney's fees, nor is the plaintiff hospital entitled to payment of the bills in question or interest with regard to its claim(s).

35. This is an action brought on behalf of plaintiff for payment of No-Fault benefits, interest and attorney fees for personal injuries allegedly sustained by Plaintiff's alleged assignor on April 23, 1999.

36. Plaintiff allegedly submitted a bill in the amount of \$ 4,738.45 to the defendant, which was received on January 5, 2001. This bill included treatment for cardiac conditions such as a chest X-Ray, Stress Test and EKG/ECG. These items may or may not be causally related to a motor vehicle accident without having a review performed of the documentation requested.

37. On January 10, 2001, pursuant to the New York No Fault Regulations parameters for issuing requests for further verification (see argument above, paragraphs 9-14), TRAVELERS validly and timely notified the plaintiff via Mr. Henig and Plaintiff's assignor that the claim could not be processed until the receipt of necessary documentation, including emergency room/medical records, medical records, narratives, admission and discharge summaries, and specifically, the request indicated the following:

IN ORDER TO VERIFY CAUSAL RELATION OF CARDIAC TREATMENT WITH THE MOTOR VEHICLE ACCIDENT, WE REQUIRE THE COMPLETE HOSPITAL RECORD IN CONNECTION WITH THE DRG, INCLUDING, BUT NOT LIMITED TO, ALL PHYSICIAN ORDERS, REPORTS, NARRATIVES, ALL NURSES NOTES, RADIOLOGY AND CT SCAN RESULTS, PATHOLOGY RESULTS, ALL BLOOD WORK RESULTS, EKG/ECG AND STRESS TEST RESULTS, AS WELL AS THE ATTENDING PHYSICIAN REPORTS. IN ADDITION, WE REQUIRE THE MEDICAL RECORDS OF PATIENT'S PHYSICIAN FOLLOWING HER DISCHARGE FROM THE HOSPITAL.

See TRAVELERS' request for verification annexed hereto as **Exhibit "M"**. Said notification was sent to both the plaintiff and counsel for the plaintiff's alleged assignor within ten (10) business days of receipt of the bill, in compliance with the New York No Fault Regulation.

38. TRAVELERS did not receive the requested verification. Thereafter, on February 14, 2001, within the acceptable 40 day timeframe required by the No Fault Regulation TRAVELERS issued a second request for further verification asking for the same information. (See request, annexed hereto as **Exhibit “N”**).

39. To date, TRAVELERS has not received the additional verification timely requested. Therefore, plaintiff’s action is premature and the defense is entitled to summary judgment. *See* annexed affidavit of Angela Abruzzino, the technical specialist assigned to this matter, annexed hereto as **Exhibit “O.”**

40. Based upon the foregoing, it is respectfully submitted that the plaintiff’s lawsuit was premature in that a lawsuit with regard to no-fault benefits cannot be commenced until such time as there is an **actual dispute** with regard to the payment of the benefits. As set forth above and in the claim’s affidavit annexed hereto TRAVELERS never denied the claim, rather issued a request for further verification that has not yet been provided by the plaintiff. *See generally* Dr. Howard Rombom a/a/o T. Basmatiah v. State Farm Mut. Auto Ins. Co., No. 38042/96 (N.Y. Civ. Ct. Oct. 29, 1997); Gautam Sehgal, M.D. a/a/o Miren Mordukhayeva v. Aetna Casualty & Surety Co., No. 16378/97 (N.Y. Civ. Ct. Nov. 3, 1997) (both holding generally that an insurance carrier may seek to extend time to process claim by requesting verification.).

41. In light of the foregoing, it is respectfully submitted that the plaintiff was not entitled to commence an action against TRAVELERS nor is the plaintiff entitled to interest or attorneys fees with regard to this matter. *See* 11 NYCRR §65.15(h) entitled *Interest on overdue payments*. “All **overdue**...benefits due...shall bear interest at a rate of two percent per month....” Emphasis added. As indicated above, the benefits were not overdue in light of the fact that the time within which to pay or

deny the claim(s) of the plaintiff was extended pending the receipt of further verification. As such, benefits that are not overdue do not incur interest!

42. Moreover, with regard to the payment of attorneys fees, 11 NYCRR §65.15(i) states as follows: “an applicant or an assignee shall be entitled to recover their attorney’s fees...if a valid claim or portion thereof **was denied or overdue.**” Again, the claim of the plaintiff was neither denied nor overdue.

43. Counsel for the plaintiff may argue that the defendant’s requests for additional verification were not on prescribed forms and had no legal effect. Counsel’s arguments are without merit! *See* annexed affidavit of Angela Abruzzino. As indicated therein, there is **no** prescribed form for requests for additional verification pursuant to NYCRR §65.15(d)(2). As such, there is no form, nor is there a requirement under the no-fault law that a particular form be provided where “additional verification” is being requested. . See also, *Westchester Medical Center a/a/o Minchalo et. al v. Travelers Property & Casualty Insurance Company*, Index No. 008903/00, Honorable Ralph P. Franco, Supreme Court, Nassau County, entered October 12, 2001 p. 4, 9 (information requested by insurer not necessarily that which can be found on the NF4 or NF5 forms...”in fact...the no-fault law goes as far as to state that a simple telephone call is sufficient to meet an Insurance Carrier’s obligation to seek further verification.”); *New York University Hospital a/a/o of Paul Feffer v. Travelers Property & Casualty Insurance Company*, Index No. 11857/01, Honorable Ute Wolf Lally, Supreme Court, Nassau County, dated July 2, 2001; *Mount Sinai Hospital a/a/o Gladden, Gursky*, Index No. 4309/00, Honorable Zelda Jonas, Supreme Court, Nassau County, dated May 31, 2001 p. 3 (“this Court finds that the original verification request may be by an appropriate letter...”), collectively annexed hereto as **Exhibit “P”**.

44. As clearly stated in the no-fault regulation, an insurer has the right to request additional verification within 10 business days of receipt of the prescribed forms and there is nothing in the no-fault

regulation stating that there is a “prescribed form” for the request of the additional verification. The forms utilized by TRAVELERS clearly state the name of the claimant, the date of the accident, the hospital’s account number and the additional verification being requested. The hospital was put on notice that the claim submitted was not going to be processed until the receipt of information necessary to verify the claim.

45. To sum up the above, the bill of the plaintiff hospital was received January 5, 2001. On January 10, 2001 (within 10 business days), a request for additional verification was sent to the plaintiff hospital. This action was squarely within the time limitations set forth in the no-fault law. As indicated clearly within the statute, there is no prescribed form to issue a “follow-up” to the verification request. The “follow-up” letter requesting further verification was mailed on February 14, 2001, within 40 days of the first request for further verification **pursuant to the guidelines of the no-fault statute.**

46. The additional verification requested was never received by Travelers and, therefore, no payment is due. Based upon the foregoing, the claim was **not** overdue as 30 days had not elapsed from the date of **receipt** of the additional verification requested. See NYCRR § 65.15(g)(1)(i) and NYCRR §65.15(g)(3):

*(g) Payment or denial of claim (30-day rule). (1)(i) No-fault benefits are overdue if not paid **within 30 calendar days after the insurer received verification of all of the relevant information requested....***

*(3) Within 30 calendar days **after proof of claim is received**, the insurer shall either pay or deny the claim in whole or in part.*

47. Based upon the foregoing, the holding of Presbyterian Hospital v. Maryland Cas. Co., 90 N.Y.2d 274 (1997) is not applicable as TRAVELERS’ time within which to pay or deny the plaintiff’s claim was not triggered based upon the fact that the additional verification requested was not received. Likewise, the holding in Mount Sinai Hospital v. Triboro Coach Inc., 263 A.D.2d 11, 699 N.Y.S.2d 77

(2d Dep't 1999) is inapplicable. Notably, the court in Mount Sinai noted that "Triboro never paid this claim or issued a Denial of Claim form. **Neither did it request additional information or in any way contest the adequacy of the information supplied by Mount Sinai.** Emphasis added. Id. at 14, 79. Further, the court noted the exception to the rule that a claim be paid or denied within 30 days and emphasized that the defendant in that case failed to request verification. It is of note that in the case at bar, it was not verification of treatment that TRAVELERS was requesting (NYCRR 65.15(d)(1)), rather, TRAVELERS requested **additional verification** pursuant to 65.15(d)(2).

48. It is further submitted that TRAVELERS is not barred from raising defenses as the time within which to issue a denial has not yet been triggered! Since the plaintiff's claim was not overdue at the time of the commencement of this action as the claim was not denied based upon the fact that the additional verification requested was not received, the plaintiff is not entitled to recover attorneys fees or interest as such sums are collectible only where the claim is disputed, to wit: a denial of claim is issued with respect to all or part of the claim OR an insurer has failed to deny or pay the claim ***within 30 days of receipt of the verification requested.***

49. Since the plaintiff's lawsuit was premature as there was no **actual dispute** with regard to the payment of the benefits the plaintiff was not entitled to commence an action against TRAVELERS nor is the plaintiff entitled to interest or attorneys fees with regard to this matter. *See* 11 NYCRR §65.15(h).

50. Based upon the foregoing, it is respectfully submitted that the defendant is entitled to the relief requested herein and the plaintiff's motion should be denied.

SIXTH CAUSE OF ACTION
ST. VINCENT'S HOSPITAL OF RICHMOND
A/A/O JAMES FORBES

51. It is respectfully submitted that summary judgment be granted to TRAVELERS in this matter as Plaintiff is not entitled to any payment over and above what the fee schedule of New York State allows.

52. A portion of the no-fault claim submitted by the plaintiff, ST. VINCENT'S HOSPITAL as Assignee of JAMES FORBES, was denied by TRAVELERS based upon the fee schedule applicable to Hospitals.

53. Pursuant to Insurance Law §5108:

- (a) The charges for services...shall not exceed the charges permissible under the schedules prepared and established by the chairman of the workers' compensation board....
- (b) No provider of health services...may demand or request any payment in addition to the charges authorized pursuant to this section.

54. Annexed hereto as **Exhibit "Q"** is an affidavit of Susan Goodman, R.N., a nurse coordinator for TRAVELERS, who reviewed hospital billing charges for fee schedule conformity. The bill was originally reviewed by Barbara Boardway, R.N., who has been on medical disability since December 6, 2001. Susan Goodman re-reviewed Ms. Boardway's analysis and found it to be correct.

55. Ms. Goodman analyzed the billing of ST. VINCENT'S HOSPITAL on this claim, and found it to be in excess of the allowable New York No Fault fee schedule.

56. A health care provider is forbidden to demand or request any payment in excess of the authorized charges provided for by Insurance Law Section 5108. See *Murali v. Upton*, 175 Misc. 2d 186, 668 N.Y.S.2d 876 (1997) relying on *Goldberg v. Corcoran*, 549 N.Y.S.2d 503 (2nd Dept. 1989).

57. It is further submitted that despite Plaintiff's assertions that the hospital bill was delayed and denied untimely, TRAVELERS' denial is considered valid and timely and should be upheld by this court. The laws which pertain to the timely delay of bills by a carrier are found in paragraphs 9-14 of this Cross Motion and will be omitted in this section for sake of brevity.

58. The no-fault bill of the plaintiff, ST. VINCENT'S HOSPITAL OF RICHMOND, as Assignee of JAMES FORBES mailed on April 17, 2001, and **received** by the defendant **April 19, 2001**. Annexed to the bill was the NF-5 (the prescribed hospital facility form).

59. Generally, a claim must be paid or denied within thirty (30) days of **receipt** of all verification requested. Pursuant to the exact language of the insurance law, a claim is overdue "if not paid within 30 calendar days *after the insurer receives verification of all of the relevant information requested pursuant to subdivision (d) of this section . . .*" As such, a suit cannot be for **overdue** no-fault billing unless and until an insurer receives the verification requested and thirty days has elapsed from the date of receipt of that verification.

60. On April 17, 2001, the plaintiff's bill **AND NF-5 VERIFICATION FORM WERE RECEIVED BY THE DEFENDANT**. Pursuant to statutory guidelines, on May 2, 2001, (*within ten (10) business days of receipt of the prescribed verification form*), a request for FURTHER VERIFICATION was forwarded to the plaintiff hospital. A copy of said request is annexed hereto and made a part hereof as **Exhibit "R"**. The required documentation was forwarded by the plaintiff's counsel, and received by TRAVELERS on June 1, 2001.

61. On June 28, 2001, within the 30 day parameter after receipt of the verified claim allowed by the New York No Fault Regulation, TRAVELERS issued a check to the plaintiff after putting the bill through a fee schedule analysis, and paid what was owed. Annexed hereto and made a part hereof as

Exhibit “S” is an affidavit executed by Angela Abruzzino, the TRAVELERS Claim Representative currently assigned to handle this claim setting forth the above.

62. In Mount Sinai Hospital, As Assignee of James Gladden, Catherin Gladden v. Travelers Property & Casualty Insurance Co., Supreme Court Nassau County (December 6, 2000), under circumstances similar to those herein, this Court held that there was a question of fact as to whether no-fault billing was overdue at the time of commencement of the action by the plaintiff. Id. at 2. A copy of the decision is annexed hereto and made a part hereof as **Exhibit “T”**.

63. In light of the foregoing, it is respectfully submitted that the plaintiff was not entitled to commence an action against TRAVELERS nor is the plaintiff entitled to interest or attorneys fees with regard to this matter. See 11 NYCRR §65.15(h) entitled *Interest on overdue payments*. “All **overdue**...benefits due...shall bear interest at a rate of two percent per month....” Emphasis added. As indicated above, the benefits were not overdue in light of the fact that the time within which to pay or deny the claim(s) of the plaintiff was extended pending the receipt of further verification. As such, benefits that are not overdue do not incur interest!

64. Based upon the foregoing, the plaintiff is not entitled to the sum denied nor is the plaintiff entitled to interest or attorneys fees.

65. Annexed hereto as **Exhibit “U”** is a valid and timely denial dated June 28, 2001, based upon a reduction of the hospital bill in accordance with the New York State Worker’s Compensation Fee Schedule, as detailed above.

66. Based upon the foregoing, the plaintiff is not entitled to the sum denied nor is the plaintiff entitled to interest or attorneys fees. Therefore, there is no issue of fact for this Court to determine, and this matter should be dismissed as a matter of law.

SEVENTH CAUSE OF ACTION
THE NEW YORK HOSPITAL MEDICAL CENTER

AS ASSIGNEE OF LARISA KUSHMAKOVA

67. According to Mr. Henig's Motion for Summary Judgment, this cause of action has been withdrawn.

68. Summary judgment is designed to expedite all civil cases by eliminating from the trial calendar claims that can properly be resolved as a matter of law. *Andre v. Pomeroy*, 35 N.Y.2d 361, 364, 362 N.Y.S.2d 131, 133 (1974). When there is no **genuine** issue of fact as to a particular party's liability to be resolved at trial. the case should be summarily decided. Moreover, Summary judgment should be granted where a defendant makes a *prima facie* showing of entitlement to summary judgment. *See, Machinery Funding Corp. v. Stan Loman Enterprises, Inc.*, 91 A.D.2d 528, 456 N.Y.S.2d 401 (1st Dep't., 1982).

That no previous application for the instant relief has been made.

WHEREFORE, your affirmant respectfully prays the Court grant the defendant's cross motion in all respects.

Dated: Melville, New York
January XX, 2002

JEENA R. BELIL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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WESTCHESTER MEDICAL CENTER, As Assignee of
AFERDITA SULJOVIC; ALICIA BRIZUELA, LAURA
CUEVA, MAXWELL ROSS; ST LUKE'S ROOSEVELT
HOSPITAL, As Assignee of DANIEL SIERRA; THE
NYACK HOSPITAL, As Assignee of VINCENT
KRASINSKI,

Index No. 01/008696

Plaintiffs,

-against-

TRAVELERS PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

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NOTICE OF CROSS-MOTION

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Docket No.: 011527JRB