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| COURT\_NAME COURT\_VENUE |  | **Index No:  IndexOrAAA\_Number** |
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| |  |  |  | | --- | --- | --- | | **PROVIDER\_NAME**  A/A/O **INJUREDPARTY\_NAME**, | | | |  | | PLAINTIFF, | |  | -AGAINST- |  | | **INSURANCECOMPANY\_NAME**, | | | |  | | DEFENDANT | |  | **NOTICE OF MOTION FOR SUMMARY JUDGMENT**  **No-Fault**  **Part 41**  **Return Date:\_\_\_\_/\_\_\_\_/\_\_\_\_**  Not On Trial Calendar |

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| **PLEASE TAKE NOTICE,** that upon the annexed affirmation of Alek Beynenson, Esq., dated NOWDT; upon the annexed Exhibits; and upon all of the prior pleadings and proceedings herein, the undersigned will move this Court at Special Term, Part 41, of the COURT\_NAME, COURT\_VENUE located at COURT\_ADDRESS Room 308, on \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ at 9:30 a.m. or as soon thereafter as counsel can be heard for an Order pursuant to CPLR 3212 granting SUMMARY JUDGMENT in favor of the plaintiff and against the defendant on all causes of action set forth in the complaint and for such other and further relief the Court deems just and proper.  **PLEASE TAKE FURTHER NOTICE,** that you are required to be served upon the undersigned your answering papers no later than seven (7) days before the return date of this application. If service of opposing papers is made by mail, it must be mailed twelve (12) days prior to the return date of this application pursuant to CPLR Section 2103. | | |
| DATED: | Franklin Square, New York NOWDT | | |
|  | | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: Alek Beynenson, Esq. THE BEYNENSON LAW FIRM, PC.  Attorneys for Plaintiff(s)  475 Franklin Avenue  Franklin Square, NY 11010  Tel: 516-858-4411  Fax: 516-216-5405  Our Case Id:**Case\_Id** | |
| TO: **DEFENDANT\_NAME** Attorney for Defendant(s)  **DEFENDANT\_ADDRESS**  **DEFENDANT\_CITY, DEFENDANT\_STATE DEFENDANT\_ZIP**  **Tel: DEFENDANT\_PHONE Fax: DEFENDANT\_FAX**  **YOUR FILE # ATTORNEY\_FILENUMBER** | | | |

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| |  |  |  | | --- | --- | --- | | **PROVIDER\_NAME**  A/A/O **INJUREDPARTY\_NAME**, | | | |  | | PLAINTIFF, | |  | -AGAINST- |  | | **INSURANCECOMPANY\_NAME**, | | | |  | | DEFENDANT | |  | **AFFIRMATION IN SUPPORT** |

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| I, Alek Beynenson, an attorney duly licensed to practice before the Courts of the State of New York, upon information and belief, under the penalty of perjury, affirms as follows::   1. I am an attorney at The Beynenson Law Firm, P.C., attorneys for the above-captioned plaintiff. I make this Affirmation upon information and belief, the source of which is my office file on this matter, communications with the plaintiff, and a reasonable inquiry into the circumstances surrounding the underlying lawsuit which I believe to be true, complete and accurate. As such I am familiar with the facts and circumstances herein. 2. This affirmation is submitted in support of Plaintiff’s motion for an order seeking summary judgment for all causes of action and for such other and further relief as this Court may deem just and proper. Summary judgment is the appropriate remedy due to the fact that the Defendant failed to deny the above-captioned claim(s) in a timely fashion. In fact, Defendant’s own denial(s) establishes that Defendant failed to timely deny the above-captioned claims. 3. This action was commenced by service of a Summons and Complaint. See annexed hereto as **Exhibit A**. Issue was joined with service of a Verified answer. See annexed hereto as **Exhibit B**. 4. The action concerns the reimbursement of no-fault benefits, the application of the thirty (30) day preclusion in Insurance Law Section 5106(a) and 11 NYCRR 65.15(g)(3) which prohibits an insurer from raising its defenses to payment on a claim for no-fault benefits when the insurer fails to disclaim liability for payment within thirty (30) days following submission of the claim and the failure of defendant to raise triable issues of fact to overcome plaintiff’s prima facie showing of entitlement to benefits.   **STATUTORY AND REGULATORY FRAMEWORK**   1. It is respectfully asserted that Plaintiff is entitled to summary judgment for the following reason: the claim process was initiated when Plaintiff(s) forwarded proof of claim to the Defendant. See **EXHIBIT C** for copies of the submitted documents and **EXHIBIT D** for an affidavit of mailing by an individual with personal knowledge. In response to receipt of proof of claim, Defendant issued a denial of a claim form. See **EXHIBIT E** for a true and accurate copy of the denial form. According to the denial, the bills as submitted by Plaintiff(s) were received by the carrier. This serves as an admission that proof of claim was in fact submitted by Plaintiff(s) and therefore establishes plaintiff’s prima facie entitlement to summary judgment. See A.B. Med. Servs., PLLC v. New York Cent. Mut. Fire Ins. Co., 2004 NY Slip Op 50507(U) (N.Y. App. Term 2004) (“The denials attached to plaintiffs’ moving papers which state when defendant received the claims, adequately establishes that the plaintiffs’ sent the claims to defendant). See also Inwood Hill Med. P.C. v. Allstate Ins. Co., 2004 NY Slip Op 50565U, 8 (N.Y. Civ. Ct. 2004) (“The date the claim was received as specified on the Denial of Claim (NF-10) form serves as an admission by the insurer and is sufficient proof of mailing”). 2. Thus, the burden is on the defendant to show with admissible evidence that a timely denial of claim was issued within the statutory time frame and there is a supportable reason for said denial by a person with the appropriate expertise to render said decision. Moreover, to overcome Plaintiff(s)’ prima facie case, Defendant’s documents must be in admissible form and mere conclusory allegations cannot raise triable issues of fact. Fair Price Med. Supply Corp. v General Assur. Co., 6 Misc 3d 137(A), 800 NYS2d 345, 2005 NY Slip Op 50256(U) (App Term, 2d & 11th Jud Dists 2005); Central Nassau Diagnostic Imaging, P.C. v. GEICO, 2010 NY Slip Op 20244 (N.Y. App. Term 2010) 3. However, as noted above, it is respectfully submitted that the denial of claim is both untimely and improper as a matter of law.   **STATUTORY AND REGULATORY FRAMEWORK**   1. The Insurance Law provides an injured person with prompt reimbursement for basic economic loss arising out of the use or operation of a motor vehicle. Basic economic loss is defined to include all reasonable and necessary medical expenses, loss of earnings and all other reasonable and necessary expenses incurred relating to the injuries sustained. 2. The underlying purpose of the Insurance Law was intended to reduce litigation in motor vehicle accidents and provide prompt reimbursement for economic loss without regard to fault. 3. The Insurance Law and Insurance Department Regulations create an affirmative duty on the part of the insurer to take specific and timely action with respect to claims for no-fault benefits. Insurance Law Section 5106(a) and New York Code of Rules and Regulations Section 65.15(g)(3) provides that “first-party” no-fault benefits must be paid as the loss is incurred and such benefits are overdue if not paid or denied within (30) days after receipt of proof of claim. 4. The Superintendent of Insurance promulgated regulations establishing procedures designed to resolve no-fault disputes including coverage, policy violations and necessity of the medical services. The Regulations provide that the insured may request additional verification of treatment within (15) business days of receipt of the prescribed verification forms. If the necessary verification is not submitted thirty (30) calendar days after it was originally requested, the insurer shall within ten (10) calendar days, follow-up with the second request to obtain the missing verification. The insurer then has thirty (30) days to pay or deny the claim from the time that it receives the verification. 5. The New York State Court of Appeals has held that an insurer’s failure to reject a no-fault claim within the thirty (30) days period prescribed by Insurance Law Section 5106(a) and 11NYCRR 65.15(g)(3) precludes the insurer from subsequently challenging payment of the claim. Presbyterian Hosp. v. Maryland Casualty Co., 90 N.Y.2d 274, 660 N.Y.S.2d 536 (N.Y. 1997) 6. The insurer has an affirmative duty to assist the applicant for benefits to get prompt and fair payment of the claim. With this in mind, all verification requests, including requests for an Examination Under Oath (EUO) must be reasonable and cannot be adversarial to the INJUREDPARTY\_NAME/assignor or the Plaintiff/assignee. 11 NYCRR 65.15(a)(d) and (e) provide in pertinent part:   65.15(a) Claim practice principles to be followed by all insurers:   * + - 1. Have as your basic goal the prompt and fair payment to all accident victims.       2. Assist the applicant in the processing of the claim. Do not treat the applicant as an adversary.       3. Do not demand verification of facts unless there are good reasons to do so.   65.15(d) Claim procedure:   * + - 1. Within 10 business day after receipt of the completed application for motor vehicle no-fault benefits, the insurer shall forward, to the parties required to complete them, the prescribed verification forms it will require prior payment of the initial claim. The insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was required.       2. 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.   65.15(e):   * + - 1. Verification requests. At a minimum, if any requested verification has not been supplied to the insurer thirty (30) calendar days after original request, the insurer shall, within fifteen (15) calendar days, follow up with the party from the verification was originally requested, either by telephone call, properly documented in the file, or by mail. At the same time the insurer shall inform the applicant and such person’s attorney of the reason(s) why the claim is delayed by identifying in writing the missing verification and the party from whom it was requested.  1. The Appellate Division, Second Department addressed this issue in Mount Sinai Hosp. v. Triboro Coach, Inc., 263 A.D.2d 11 (2d Dept 1999). In Mount Sinai Hosp., the court stated that a “challenge to the adequacy of … claim forms, including an alleged absence of necessary signatures must be preserved in the ten day verification period or be waved”. Id. at 17. Further, the Court of Appeals in Hosp. for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 2007 NY Slip Op 9067, 1 (N.Y. 2007), held that carriers failure to allege a deficiency in plaintiff’s assignment, in its denial, constituted a waiver.   **FACTS**   1. The Plaintiff(s) assignor(s) INJUREDPARTY\_NAME was injured in a motor vehicle accident(s) of ACCIDENT\_DATE. 2. The defendant was the insurer of the motor vehicle(s) in which the assignor(s) was eligible for no-fault benefits. 3. The assignor(s) received medical treatment for injuries sustained as a result of the motor vehicle accident. 4. The assignment(s) is a valid as there was a complete transfer of rights from the assignor(s) to the Plaintiff(s) concerning the plaintiff(s) right to submit a claim for no-fault benefits directly to the Defendant. 5. The Plaintiff(s) timely submitted claims for no-fault benefits to the defendant for reimbursement of no-fault benefits in the amount of all Balance\_Amount. See affidavit of mailing attached hereto as **EXHIBIT D**. 6. The defendant failed to pay or properly deny the claims within thirty (30) days of receipt of the bills and failed to timely request additional verification or challenge the adequacy of the forms in accordance with the regulatory time period governed by verification request.   **SUMMARY JUDGMENT**   1. Pursuant to CPLR 3212, a motion for Summary Judgment shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be granted established sufficiently to warrant the Court as a matter of law in directing judgment in favor of any party. CPLR 3212 states in pertinent part:    1. Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. 2. On a motion for summary judgment, the moving party has the initial burden of establishing that there are not tribal issues of fact. The summary judgment standard requires a plaintiff seeking reimbursement of no-fault benefits to submit evidentiary proof in admissible form that supports the alleged facts. The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material fact. Alvarez v. Prospect Hosp., 68 N.Y.2d 320, 324, 501 N.E.2d 572, 508 N.Y.S.2d 923 (N.Y. 1986). 3. If the moving party has demonstrated entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a triable issue. Zuckerman v. New York, 49 N.Y.2d 557, 562, 404 N.E.2d 718, 427 N.Y.S.2d 595 (N.Y. 1980); see Grasso v Angerami, 79 N.Y.2d 813, 814, 588 N.E.2d 76, 580 N.Y.S.2d 178 (N.Y. 1991). 4. **Prima Facie Burden in No-Fault** 5. To establish a prima facie entitlement to payment of a no-fault claim, the plaintiff must show that a facially valid claim was presented to the insurance carrier. Boro Med. Supplies, Inc. v Country Wide Ins. Co., 2008 NY Slip Op 52698(U) (App. Term 2008); see Oceanside Medical Healthcare, P.C. v Progressive Ins., 2002 NY Slip Op 50188(U), 17-20 (Civ Ct, Kings County); Vinings Spinal Diagnostic v Liberty Mut. Ins. Co., 186 Misc 2d 287, 717 NYS2d 466 (N.Y. Dist. Ct. 2000). 6. This burden does not change, regardless of the timeliness of defendant’s denial. See Oceanside Medical Healthcare P.C.; Park Health Center v. Prudential Property & Casualty Ins. Co., 2001 NY Slip Op 40650(U) (App Term 2d and 11th Jud Dists). 7. In Oceanside Medical Healthcare P.C., the court, relying on Park Health Center, stated that the plaintiff need make no showing that the services rendered were necessary beyond that contained in the prescribed verification forms. 8. A facially valid claim consists only of a bill being sent to the insurance carrier. The failure to include signatures, an assignment or any other deficiency does not affect the sufficiency of plaintiff’s prima facie showing. See Mount Sinai Hosp. v. Triboro Coach, Inc., 263 A.D.2d 11, 17 (2d Dept 1999); Park Health Ctr. v. Eveready Ins. Co., 2001 NY Slip Op 40665(U) (App. Term). As such, despite some contrary ruling by the civil courts, the Appellate Division and Appellate Term have stated that there is no requirement that an assignment or signed verification of treatment form be presented as a part of plaintiff’s prima facie case. These defenses are for the defendant to raise only if preserved in timely verification requests or a timely denial. 9. Despite this, plaintiff satisfies even the most stringent of ruling on prima facie as plaintiff did submit an affidavit from someone with personal knowledge of the mailing of the proof of claim **(EXHIBIT D)** and Defendant’s denial **(EXHIBIT E)** admits receipt of such. 10. Moreover, by issuing a denial of claim, Defendant has admitted receipt of the bills in question. Therefore, by submitting the denial of claim, Plaintiff has established that it submitted the statutory forms to Defendant and has proven its prima facie case. A.B. Medical Services, PLLC v New York Central Mutual Fire Ins. Co., 3 Misc 3d 136(A), 787 NYS2d 675, 2004 NY Slip Op 50507(U) (App Term, 2d & 11th Jud Dists 2004); Fair Price Medical Supply Corp. v Elrac Inc., 12 Misc 3d 119, 820 NYS2d 679 (App Term, 2d & 11th Jud Dists 2006).      1. **Avoiding Summary Judgment** 2. To avoid summary judgment when faced with an insured's prima facie case, the insurer must show facts sufficient to require a trial of any issue of fact and must do so "through acceptable medical proof." CPLR 3212(b). See State Farm Mutual Auto Ins. Co. v. Deichmeier, 117 AD2d 795, 795-796 (2d Dept. 1986). 3. As discussed supra, in order to introduce evidence, the defendant must present admissible evidence that its denial of claim is timely. Failure to do so precludes defendant from even presenting evidence to rebut plaintiff’s prima facie case. See Presbyterian Hosp. v. Maryland Casualty Co., 90 N.Y.2d 274, 660 N.Y.S.2d 536 (1997); Oceanside Medical Healthcare P.C v. Progressive Insurance Co., NYLJ 5/23/02. At 22, (col.4). Additionally, the defendant is bound by those issues raised in its denial of claim form and cannot now add additional reasons for the denial of benefits. See Presbyterian Hosp. v. Maryland Casualty Co., 90 N.Y.2d 274, 660 N.Y.S.2d 536 (1997); Mount Sinai Hosp. v. Triboro Coach, Inc., 263 A.D.2d 11, 17 (2d Dept 1999). 4. If the insurer can show a timely denial of claim, the insurer than must proffer evidence in admissible form by someone with personal knowledge of the facts, and with appropriate expertise to render an opinion. Bonetti v. Integon Nat'l Ins. Co., 269 A.D.2d 413, 414 (2d Dept 2000); Park Health Ctr. v. Green Bus Lines Inc., 2002 NY Slip Op 40029(U), 3 (App Term 2d Dept.); Mount Sinai Hosp. v. Triboro Coach, Inc., 263 A.D.2d 11, 20 (2d Dept 1999). 5. When an insurer disputes coverage on the ground that the alleged injury did not arise out of an insured accident or that the services were not medically necessary an expert’s affidavit will usually be necessary to effectively establish the basis of the insurers founded belief: only an expert’s affirmation can give the court proper guidance in such a specialized scientific matter, and can provide in the majority of insurances, a proper factual foundation for the insurer’s good faith belief. Mount Sinai Hosp., 263 A.D.2d at 20-21. 6. Similarly, a denial on any other ground also needs to be supported by an affidavit, in admissible form, by a person with knowledge. Bonnetti, 269 AD2d at 414. 7. Finally, the insurer should not sit idle, claiming that the plaintiff has failed prove submission of bills or other documents. As discussed supra, the regulations place an affirmative duty on the insurer to help the applicant get prompt and fair payment and not to treat the applicant as an adversary. See NYCRR Section 65.15(a)(1)(2). As such, defendant should not be allowed to state that plaintiff has failed to provide the court with the proper proof of mailing when the insurer’s record show the claim was submitted. See id. Failure of the carrier to dispute this issue with an affirmative statement of non-receipt should act as an admission.   **PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT**   1. Here, Plaintiff(s) forwarded bills for services to the defendant, completed prescribed no-fault verification of treatment forms and an assignment of benefits. This establishes plaintiff’s prima facie entitlement to summary judgment. Thus, the burden is on the defendant to show with admissible evidence that a timely denial of a claim was issued within the statutory time frame and that there is a supportable reason for said denial by a person with the appropriate expertise to render such decision. 2. To overcome Plaintiff(s) prima facie case, Defendant’s documents must be in admissible form and mere conclusory allegations cannot raise triable issues of fact. See Nika Med. Supply v. Nationwide Mutual Ins. Co., 2003 NY Slip Op 50858(U) (N.Y. App. Term)     **WHEREFORE** Plaintiff respectfully requests that an Order be entered granting the plaintiff Summary Judgment in the amount of Balance\_Amount, for the outstanding medical bills, together with the statutory interest statutory attorneys fees and the cost and disbursement of this action, together with such further relief as this Court may deem just and proper. |
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| DATED: | Franklin Square, New York NOWDT |

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|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Alek Beynenson, Esq.**  THE BEYNENSON LAW FIRM, P.C.  Attorneys for Plaintiff(s)  475 FRANKLIN AVENUE  FRANKLIN SQUARE, NY 11010  Tel: 516-858-4411  Fax: 516-216-5405  Our Case Id:Case\_Id |

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| TO: **DEFENDANT\_NAME** Attorney for Defendant(s)  **DEFENDANT\_ADDRESS**  **DEFENDANT\_CITY, DEFENDANT\_STATE DEFENDANT\_ZIP**  **Tel: DEFENDANT\_PHONE Fax: DEFENDANT\_FAX**  **YOUR FILE # ATTORNEY\_FILENUMBER** |

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| I, Alek Beynenson, Pursuant to Section 130-1 of the Rules of the Chief Administrator (22 NYCRR), I certify that to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the within Notice Of Motion and Affirmation are not frivolous. |

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| DATED: | NOWDT  Franklin Square, New York |

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|  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: Alek Beynenson, Esq. THE BEYNENSON LAW FIRM, P.C.  Attorneys for Plaintiff(s)  475 Franklin Avenue  Franklin Square, NY11010  Tel: 516-858-4411:  Fax: 516-216-5405  **Our Case Id: Case\_Id** |

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| STATE OF NEW YORK COUNTY OF NASSAU | ) ) ss. |

I, Alla Levy, being sworn, deposes and says:

I am not a party to the action, am over eighteen (18) years of age and reside in the State of New York.

On \_\_\_\_\_\_\_\_\_\_\_\_\_, I served the within NOTICE OF MOTION AND SUPPORTING PAPERS via First Class Mail, by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within New York State, addressed to the following:

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|  | TO: **DEFENDANT\_NAME** Attorney for Defendant(s)  **DEFENDANT\_ADDRESS**  **DEFENDANT\_CITY, DEFENDANT\_STATE DEFENDANT\_ZIP**  **Tel: DEFENDANT\_PHONE Fax: DEFENDANT\_FAX**  **YOUR FILE # ATTORNEY\_FILENUMBER** |

                                                                              \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
                                                                               Alla Levy

 Sworn to before me on

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
Roza Pinkhasova

Notary Public, State of New York

No. 01PI6209788

Qualified In Queens County

Commission Expires August 03, 2013

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**MOTION FOR SUMMARY JUDGMENT**

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THE BEYNENSON LAW FORM P.C.  
Attorneys for Plaintiffs  
475 Franklin Avenue.  
Franklin Square, NY 11010  
Tel: 516-858-4411

Fax: 516-216-5405