

This opinion is uncorrected and will not be published in the printed Official Reports.

*1 Harmonic Physical Therapy, P.C., a/a/o Gladis Nunez, Plaintiff-Respondent,
v.
Praetorian Insurance Company Defendant-Appellant.

570555/14
Supreme Court, Appellate Term, First Department
Decided on April 14, 2015

CITE TITLE AS: Harmonic Physical Therapy, P.C. v Praetorian Ins. Co.

ABSTRACT

[Insurance](#)
[No-Fault Automobile Insurance](#)

Basic Economic Loss—Priority of Payment

Harmonic Physical Therapy, P.C. v Praetorian Ins. Co., 2015 NY Slip Op 50525(U). Insurance—No-Fault Automobile Insurance—Basic Economic Loss—Priority of Payment. (App Term, 1st Dept, Apr. 14, 2015)

PRESENT: Lowe, III, Schoenfeld, Hunter, Jr., JJ.

Defendant, as limited by its briefs, appeals from so much of an order of the Civil Court of the City of New York, Bronx County (Donald A. Miles, J.), entered March 20, 2013, as denied its cross motion for summary judgment dismissing the complaint.

OPINION OF THE COURT

Per Curiam.

Order (Donald A. Miles, J.), entered March 20, 2013, insofar as appealed from, reversed, with \$10 costs, and defendant's motion for summary judgment dismissing the complaint is granted. The Clerk is directed to enter judgment accordingly.

The defendant-insurer made a prima facie showing of entitlement to summary judgment dismissing the action for first-party no-fault benefits. The evidentiary proof submitted by defendant established that, following the timely denial of plaintiff-provider's claim on the ground of lack of medical necessity, the governing insurance policy's coverage limits had been exhausted through payment of no-fault benefits in satisfaction of arbitration awards rendered in favor of other health care providers, and that such payments were made in compliance with the priority of payment regulation (*see* [11 NYCRR 65-3.15](#); *Nyack Hosp. v General Motors Acceptance Corp.*, 8 NY3d 294 [2007]; *New York and Presbyt. Hosp. v Allstate Ins. Co.*, 28 AD3d 528 [2006]).

In opposition, plaintiff failed to raise a triable issue. Contrary to plaintiff's contention, defendant was not precluded by [11 NYCRR 65-3.15](#) from paying other providers' legitimate claims subsequent to the denial of plaintiff's claims. Adopting plaintiff's position, which would require defendant to delay payment on uncontested claims, or, as here, on binding arbitration awards - pending resolution of plaintiff's 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 Accept. Corp.*, 8 NY3d at 300).

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

I concur I concurI concur

Decision Date: April 14, 2015

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