

**Allstate Ins. Co. v Plainview  
Professional Med., P.C.**

2007 NY Slip Op 33040(U)

September 25, 2007

Supreme Court, New York County

Docket Number: 1427-06/

Judge: Stephen A. Bucaria

Republished from New York State Unified Court  
System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for  
any additional information on this case.

This opinion is uncorrected and not selected for official  
publication.

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

**HON. STEPHEN A. BUCARIA**

Justice

---

ALLSTATE INSURANCE COMPANY,  
ALLSTATE INDEMNITY COMPANY,  
DEERBROOK INSURANCE COMPANY,

Plaintiffs,

-against-

PLAINVIEW PROFESSIONAL MEDICAL, P.C.,  
BRUCE BROMBERG, D.C., RAFAEL GARCIA,  
M.D., PPC HEALTHCARE MANAGEMENT,  
INC. and HANDON MANAGEMENT LTD.,

Defendants.

---

TRIAL/IAS, PART 6  
NASSAU COUNTY

INDEX No. 11427/06

MOTION DATE: Aug. 29, 2007  
Motion Sequence # 002

The following papers read on this motion:

Notice of Motion..... X  
Reply Affirmation ..... XX

This motion, by plaintiffs, for an order pursuant to CPLR §§3101 and 3120, requesting this Honorable Court to compel defendants Rafael Garcia, MD and Bruce Bromberg, D.C., to provide requested discovery and for Bruce Bromberg to submit to a continued examination before trial regarding the financial records of Plainview Professional Medical, P.C.(hereinafter "PPC"), and Handon Management, Ltd.(hereinafter "Handon"), and failing to do so, have his Answer stricken; and for any such other and further relief as to this Court deems just and proper, is determined as hereinafter set forth.

**FACTS**

This is an action in which the plaintiff Allstate alleges that the defendants have sought to misrepresent their services to perpetrate an extended fraud against the No-Fault system and Allstate by the creation of a sham professional corporation and submission of numerous bills which are both deceptive and fraudulent. The defendant Plainview filed its Certificate of Incorporation on May 8, 2000. According to the On-Line Verification website of the New York Department of Education, defendant Rafael Garcia, M.D. is listed as the owner. The facility has locations in both Plainview and Baldwin. From April 4, 2002, through 2006, Plainview billed Allstate for No-Fault bills for treatment allegedly rendered to No-Fault patients. Rafael Garcia, a licensed medical doctor, testified in a deposition that he was not the owner of this medical facility but merely an employee. Bruce Bromberg, D.C. is a licensed chiropractor in the State of New York and is alleged to be the true owner of Plainview. PPC and Handon are management companies owned by Bruce Bromberg and perform services for Plainview.

**PLAINTIFF'S CONTENTIONS**

As part of discovery, on or about November 20, 2006, plaintiffs' counsel served defendants with a Notice for Discovery & Inspection seeking numerous documents and records. On or about May 14, 2007, the defendant Bruce Bromberg provided a Response to Notice for Discovery and Inspection containing only a portion of the documents requested. The plaintiff argues that, since the defendants Rafael Garcia and Bruce Bromberg failed to fully respond to the plaintiff's demand for Discovery and Inspection prior to defendant Bruce Bromberg's oral deposition, counsel for the plaintiffs was not able to question him about the contents of the missing documents, and the plaintiff requires that Bruce Bromberg should be directed to appear for a continued deposition, limited to the contents of those missing documents.

These missing documents are needed by the plaintiff to get a true picture of the activity of Plainview, who was providing treatment to the patients, and who was getting paid. The plaintiff conducted an oral deposition of Dr. Bromberg prior to the defendants' response to plaintiffs' Demand for Discovery and Inspection. The plaintiffs contend that the defendant Bromberg has willfully sought to thwart the plaintiff's discovery in this matter and such conduct should not be tolerated by this Court; and that the plaintiffs are entitled to the requested documents from this defendant, or to have access to the files, with an opportunity to make copies thereof, of the requested documents.

**DEFENDANT'S CONTENTIONS**

The defendants assert that the documents and records sought by the plaintiff are not in the possession of defendant Bromberg who is the only defendant with whom counsel has been able to maintain meaningful contact. Counsel contends that defendant Garcia has been incapacitated since the Fall of 2006, when he suffered serious injuries as the result of an automobile accident; and is housebound and is under the regular care of home attendants. Counsel has been informed that Dr. Garcia is undergoing physical rehabilitation and has tubes inserted in his body for drainage and/or feeding purposes.

Bruce Bromberg asserts that he has provided all responsive documents in his possession, that he has no knowledge of others demanded, and that with respect to other demands he is not in possession of any responsive documents. He further asserts that he has conducted a good faith search for all responsive documents when he was initially served with plaintiffs' Notice for Discovery and Inspection. The defendants have no objection to plaintiffs' request that the defendant Bruce Bromberg be made available for his continuing deposition based on the plaintiffs' receipt of certain documents produced by Bruce Bromberg after his examination before trial took place. The defendants acknowledge that this Court may issue an order compelling further disclosure by the defendants, notwithstanding defendant Dr. Bromberg's position as to the availability or existence of documents requested.

**PLAINTIFF'S REPLY**

The plaintiffs assert that the affirmation submitted by counsel should be rejected by this Court as it is all hearsay and unsupported by an affidavit by either Bruce Bromberg or Rafael Garcia; and Rafael Garcia's incapacitation is totally unsupported with an accident report, hospital record, the name of Rafael Garcia's treating physician, the name or claim number of the No-fault carrier, or anything to support this contention.

The plaintiffs argue that there is no reason why Bruce Bromberg cannot provide an affidavit, or provide documents related to Handon Management Ltd., a corporation that he formed, and owns, and that is still carried as an active corporation with the New State Department of State. As a result of the defendants' unresponsive statements, devoid of any effort to comply, the Court should strike the Answer of the defendants Bruce Bromberg and Rafael Garcia and compel Bruce Bromberg to provide the plaintiff with full and complete discovery of all of the requested documents and that he appear for a continued examination before trial.

**DECISION**

The State of New York regulates the practice of medicine and restricts the practice of medicine and the ownership of medical professional corporations to licensed physicians. The State does so in order to protect consumers and the public health. Only licensed physicians subject to the regulation and oversight of the State, are permitted to practice medicine. The only corporations permitted to provide medical services are professional corporations that must be owned exclusively by physicians. The use of the title “physician” by one who is not a physician, is prohibited by New York’s Education Law § 6513.

The State of New York requires that insurers provide No-Fault insurance benefits to a person injured in an automobile accident pursuant to Article 51 of the Insurance Law. The New York State Department of Insurance has promulgated the regulations that further govern No-Fault claims. These regulations provide that, to be compensated under No-Fault, health services must be provided by a licensed provider within the scope of his/her license. In the State of New York, to the extent that a physician wishes to provide medical services through a corporate entity, that physician must be appropriately licensed by the State and provide such services through a legally constituted professional corporation. According to article 15 of the Business Corporation Law, only a professional corporation, as opposed to a business corporation, is permitted to practice a profession such as medicine. That professional corporation must have as an owner an individual who is licensed to practice that profession as an individual. So, a medical professional corporation must have a physician as an owner.

In **State Farm v. Mallela**, 4 N.Y. 3d 313, 827 N.E. 2d 758, 794 N.Y.S. 2d 700 (2005), the Court of Appeals held, in part, that a fraudulently incorporated professional corporation is not entitled to recover benefits under the New York State No-Fault Law and implemented regulations.

New York No-Fault benefits also encompass chiropractic care.

CPLR § 3101 provides that “there shall be full disclosure of all evidence material and necessary in the prosecution or defense of an action”. Litigants are entitled to reasonable discovery “of any facts bearing on the controversy which will assist preparation for trial by sharpening the issues and reducing delay and prolixity” (**Allen v.**

Allen Crowell-Collier Pub. Co., 21 NY2d 403, 406, 235 N.E. 2d 430, N.Y.S. 2d 449). The documents requested by Plaintiff will clearly assist them in preparing for and making their case.

The defendants' counsel's affirmation provides no support of Rafael Garcia's incapacity as to his inability to produce requested documents. Nor is there a reason why Bruce Bromberg, the founder and owner of Handon Management Ltd., cannot produce the requested documents related to that corporation.

The circumstances herein dictate an order compelling defendants to produce the requested documents. Failure of the defendants to comply with such discovery requests could result in the preclusion of evidence or testimony or sanctions. Although a harsh sanction should not be resorted to in the absence of a showing that the noncomplying party's conduct was willful, contumacious or in bad faith, (Nudelman v New York City Transit Authority, 172 AD2d 503, 504, 567 NYS2d 851, 2<sup>nd</sup> Dept., 1991), the nature and degree of penalty to be imposed for failure to comply with discovery request is a matter lying soundly within the discretion of the Court (Associated Mutual Insurance Co. v. Dyland Tavern, Inc., 105 A.D.2d 892, 482 N.Y.S.2d 359, 3<sup>rd</sup> Dept., 1984).

The plaintiff is entitled to disclosure of those documents and records sought in this instant motion, and it is ordered, pursuant to CPLR §3124, that the defendants provide the requested documentation within 20 days after service of a copy of this Order upon defendants' attorney.

The drastic sanction of striking an answer, pursuant to CPLR §3126, should not be levied unless the default is clearly shown to be "deliberate and contumacious" (Nudelman v. New York City Transit Authority, supra). The plaintiff has not met his burden of showing willfulness or bad faith in the failure of the defendants to provide the requested documents (Shapiro v. Rose, 195 A.D.2d 935, 600 N.Y.S.2d 819, 3<sup>rd</sup> Dept., 1993), nor have the plaintiffs shown that the delay changed their circumstances in any detrimental manner (Nudelman v. New York City Transit Authority, supra). As such, the defendants will be given a final opportunity to comply with the request by this Court's Order.

The plaintiffs may further examine defendant Bruce Bromberg regarding these issues once discovery of these documents and records have been obtained.

ALLSTATE INSURANCE COMPANY, et al

Index no. 11427/06

Accordingly, this motion to compel is **granted** as set forth hereinabove. Counsel are reminded of the status conference scheduled for October 2, 2007 at 9:30 a.m. in Chambers of the undersigned.

Dated September 25, 2007

Stephen A. Brennan  
J.S.C.

**ENTERED**  
SEP 27 2007  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE