

<b>Alliance Natl. Ins. Co. v Landa</b>
2017 NY Slip Op 32389(U)
March 30, 2017
Supreme Court, Nassau County
Docket Number: 600111/14
Judge: Antonio I. Brandveen
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**ORIGINAL**

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

Present: ANTONIO I. BRANDVEEN

J. S. C.

ALLIANCE NATIONAL INSURANCE  
COMPANY,

Plaintiff,

- against -

DAVID LANDA a/k/a THE LANDA GROUP;  
OAKWOOD OPERATING CO., LLC d/b/a  
AFFINITY SKILLED LIVING AND  
REHABILITATION CENTER; BETHANY  
OPERATING CO., LLC d/b/a BETHANY  
GARDENS SKILLED LIVING CENTER;  
GOLDCREST CARE CENTER; FIELDSTON  
OPERATING LLC d/b/a FIELDSTON LODGE  
CARE CENTER; SUNNYSIDE CARE CENTER  
LLC d/b/a SUNNYSIDE CARE CENTER LLC;  
SUNRISE MANOR NURSING HOME, INC.  
d/b/a SUNRISE MANOR CENTER FOR  
NURSING AND REHABILITATION; VALLEY  
VIEW MANOR, LLC d/b/a VALLEY VIEWS  
MANOR NURSING HOME; WELLSVILLE  
MANOR LLC d/b/a, WELLSVILLE MANOR  
CARE CENTER; WINDSOR PARK NURSING  
HOME INC.,

Defendant.

TRIAL / IAS PART 31  
NASSAU COUNTY

Index No. 600111/14

Motion Sequence No. 003, 004,  
005

The following papers having been read on this motion:

Notice of Motion, Affidavits, & Exhibits .....	<u>1, 2, 3</u>
Answering Affidavits .....	<u>4, 5</u>
Replying Affidavits .....	<u>6, 7</u>
Briefs: Plaintiff's / Petitioner's .....	<u>8</u>
Defendant's / Respondent's .....	<u>9</u>

The defendants move this court (motion sequence No. 003) for an order pursuant to CPLR 3124 for an order compelling the plaintiff to produce for deposition (a) its President James Agnew, (b) Controller Joseph P. Marlow and (c) Risk Manager, John Eagen.

The defendants further move this court (motion sequence No. 004) for an order pursuant to CPLR 3124 for an order compelling the plaintiff to produce documents in response to the Defendant's Supplemental Notice to Produce.

The plaintiff ALLIANCE NATIONAL INSURANCE COMPANY moves this court (motion sequence No. 005) for an order pursuant to CPLR 3212 (i) for an order granting partial summary judgment in favor of the plaintiff and against the defendant on the issue of liability and setting the issue of any damages down for inquest and (2) granting plaintiff an award for attorneys fees pursuant to contract plus costs and disbursements.

In an affirmations is support (motion sequence No. 003 and 004), Stephen W. Livingston, attorney for the defendants, argues that the further depositions of the plaintiff's officers are necessary because they have knowledge of distinct aspects of the case, including the negotiations of the worker's compensation program eventually issued by the plaintiff including the separate reimbursement agreements modifying the terms of the policy endorsements and declarations. He argues further they have knowledge of the processing of approvals for paying of claims as well as the collection procedures and balance of the escrow accounts paid into by the defendants which plaintiff maintains possession.

Counsel refers to the deposition testimony of Mary Beth Torunia, plaintiff's underwriting manager in which she testified that plaintiff's President James Agnew

provided her information pertaining to both the deductible reimbursement agreement and the aggregate deductible agreement terms of the policy. She also identified risk manager, John Eagen as the person with knowledge as to handling of claims and tht Controller Joseph P. Marlow had knowledge of payments and receipts of loss funds at plaintiff.

In an Affirmation is support (motion sequence No. 003) , Stephen W. Livingston, further argues that plaintiff has failed to respond to its Supplemental Notice to Produce;(a) all documents related to plaintiff's receipt of funds from defendants to deposit for the initial loss fund under the worker' compensation policy issued by plaintiff .(b) all documents related to payments and receipts for the initial loss fund for the entire policy period during Ms. Turunian's deposition on January 21 2016 and all documents related to claims filed as requested in the intial document demands and further requested during Ms. Torunian's deposition on January 21, 2016.

Counsel asserts the defendants are entitled to an accounting of the escrow funds held for the aggregate deductible to ensure that the monies are being properly spent of on the claims. This requires production of the banking records showing receipt of the funds from defendant, plus bank statements and check stubs showing the payment of the funds on account of the claims. Counsel further argues the defendants are entitled to claim records to audit whether or not the claims are being properly handled as a means to challenge the amount allegedly owed. Counsel points out that while the Complaint seeks approximately \$437,00 in damages, plaintiff's June22, 2016 production now seeks approximately \$1.4 million in damages.

In an affirmation in opposition (motion sequence No. 003 and 004), Linda S. Agnew, attorney for the plaintiff, avers that prior to the making of this motion plaintiff informed the defendants that it would produce Mr. Agnew and Mr. Eagan for deposition and also informed defendants that Mr. Marlone is no longer employed by plaintiff.

In response to the defendants demand for document production, counsel argues that the production of all outgoing payments would be onerous and costly, involving the analysis of over 14,000,00 transactions for all policies and all claims. Counsel states plaintiff is willing to produce a report showing all of the individual transactions with check numbers and issued date by claim if defendants were required to narrow the scope of the precise information they seek, whether by date or by claim. Similarity, plaintiff argues the defendants' demand for all claims records is overboard and unduly burdensome.

Counsel further asserts that in a e-mail to defendants on August 30,2016.it asked defendants to name as many as 5 or so claim forms that it claims are at issue. plaintiff asserts that the defendants as employer of the complaints are in the best position to pinpoint initially those files it feels are problematic. If so, that would permit plaintiff to produce a reasonable amount if documents. Finally, in an attempt to resolve the two motions, plaintiff asserts it next offered the defendants access to the records at its offices in Fort Washington, PA and to depose Mr. Agnew and Mr. Egan at that location.

Accordingly, the respective motions are decided as follows. The defense motion (motion sequence No. 003) is GRANTED to the extent that the plaintiff os ordered to produce its President James Agnew and Risk Manager John Eagen. for deposition within

30 days of service of a copy of this order with notice of entry.

The defense motion (motion sequence No. 004) is GRANTED to the extent the plaintiff is ordered to permit the defendants to examine and copy the records demanded in the Defendant's Supplemental Notice to Produce within 30 days of service of a copy of this order with notice of entry.

Finally the motion by the plaintiff (motion sequence No. 005) for partial summary judgment on liability is denied at this time as discovery is not complete. The plaintiff is granted leave to renew this motion once discovery is completed

So ordered.

Dated: **March 30, 2017**

ENTER:



J. S. C.

**ENTERED**

APR 10 2017

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

NON FINAL DISPOSITION