

**State Farm Mut. Auto. Ins. Co. v Advanced  
Orthopaedics, P.L.L.C.**

2020 NY Slip Op 31056(U)

April 27, 2020

Supreme Court, New York County

Docket Number: 151553/2019

Judge: Kathryn E. Freed

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

PRESENT: HON. KATHRYN E. FREED PART IAS MOTION 2EFM

*Justice*

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INDEX NO. 151553/2019

STATE FARM MUTUAL AUTOMOBILE INSURANCE  
COMPANY,

Plaintiff,

MOTION SEQ. NO. 002

- v -

ADVANCED ORTHOPAEDICS, P.L.L.C., BARNERT  
SURGICAL CENTER, LLC, BAY ORTHOPEDIC AND  
REHABILITATION SUPPLY CO., INC., BETHESDA PT,  
P.C., JAW-SY CHEN, PHD, EXCELL CLINICAL LAB,  
INC., HARMONY PSYCHOLOGICAL, P.C., INNOVATION  
ANESTHESIA & PAIN SERVICES P.C., NATURAL  
APPROACH CHIROPRACTIC, P.C., REDTREE  
RADIOLOGY, P.C., SABAS NY SERVICES, INC., FRANK S.  
SEGRETO, M.D., SPENCER A. COLDEN, M.D., SUMMIT  
ACUPUNCURE NY, P.C., UNIVERSITY ANESTHESIA  
SERVICES, P.C., JESSICA LOPEZ

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 42, 43, 44, 45, 46,  
47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

were read on this motion to/for SUMMARY JUDGMENT.

In this declaratory judgment action, plaintiff STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY ("STATE FARM") moves, pursuant  
to CPLR 3212, for summary judgment against defendants EXCELL CLINICAL  
LAB, INC. ("EXCELL") and SABAS NY SERVICES, INC. ("SABAS"). After a  
review of the motion papers and the relevant statutes and case law the motion,  
which is unopposed, is decided as follows.

## FACTUAL AND PROCEDURAL BACKGROUND

The facts of this case are set forth in detail in the order of this Court entered November 27, 2019, which order granted STATE FARM a default judgment against non-appearing defendants ADVANCED ORTHOPAEDICS, P.L.L.C., BARNERT SURGICAL CENTER, LLC, BAY ORTHOPEDIC AND REHABILITATION SUPPLY CO., INC., BETHESDA PT, P.C., HARMONY PSYCHOLOGICAL, P.C., INNOVATION ANESTHESIA & PAIN SERVICES P.C. a/k/a INNOVATION ANESTHESIA PAIN SERVICES, NATURAL APPROACH CHIROPRACTIC, P.C., REDTREE RADIOLOGY, P.C., FRANK S. SEGRETO, M.D., SPENCER A. COLDEN, M.D., SUMMIT ACUPUNCURE NY P.C., and JESSICA LOPEZ. The order also dismissed STATE FARM's claims against defendants JAW-SY CHEN, PHD and UNIVERSITY ANESTHESIA SERVICES, P.C. on the ground that they were never served with process. Doc. 40. Any additional relevant facts are set forth below.

STATE FARM now moves, pursuant to CPLR 3212, for summary judgment on its claim that it is not obligated to provide coverage in connection with the alleged accident since it has a "founded belief" that defendant LOPEZ was not injured by a loss covered by the policy it issued to VIDA CAFÉ INC. and JASMIN CABAN. In support of the motion, STATE FARM submits an affidavit by CABAN in which she states that she and LOPEZ arrived at the accident scene

together *after the incident occurred*. Doc. 50. STATE FARM also submits an affidavit by SAMIL GOMEZ attesting to the fact that he was driving *alone* at the time of the incident. Doc. 51. Additionally, STATE FARM submits the affidavit of its claim specialist, JULIO LOARCA, who attests, *inter alia*, that the affidavits of CABAN and GOMEZ establish a founded belief that any injuries sustained by LOPEZ did not arise from an insured incident. Doc. 43.

### LEGAL CONCLUSIONS:

An insurer "[m]ay assert a lack of coverage defense premised on the fact or founded belief that the alleged injury does not arise out of an insured incident." *Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 199 (1997). Further, "[a] collision caused in the furtherance of an insurance fraud is not a covered accident under a policy of insurance." *Matter of Eagle Ins. Co. v Davis*, 22 AD3d 846, 847 (2d Dept 2005).

Here, STATE FARM, through the affidavits of CABAN, GOMEZ, and LOARCA, establishes that it has a "founded belief" that LOPEZ was not injured in an accident covered by the automobile insurance policy it issued to VIDA CAFÉ, INC. and CABAN, and that any injuries allegedly sustained by LOPEZ in the accident are not covered by the said policy. Thus, STATE FARM is entitled to summary judgment declaring that it is not required to pay any sums arising from

the said incident to defendants EXCELL CLINICAL LAB, INC. and SABAS NY SERVICES, INC. *See Metro Med. Diagnostics v Eagle Ins. Co.*, 293 AD2d 751, 751-752 (2d Dept 2002).

Therefore, in light of the foregoing, it is hereby:

ORDERED that plaintiff's motion for summary judgment, pursuant to CPLR 3212, is granted without opposition as to defendants EXCELL CLINICAL LAB, INC. and SABAS NY SERVICES, INC.; and it is further

ADJUDGED and DECLARED that plaintiff STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY is not required to pay to defendants EXCELL CLINICAL LAB, INC. and SABAS NY SERVICES, INC. any sums arising from an alleged motor vehicle accident occurring on March 5, 2018 pursuant to policy number 206115132A, claim number 32-3558-H44; and it is further

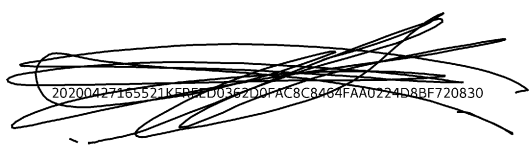
ORDERED that plaintiff STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY is to serve a copy of this order with notice of entry

upon all parties and the County Clerk's Office (Room 141B) and the Clerk of the Trial Support Office (Room 158) within 30 days of the date hereof; and it is further

ORDERED that the Clerk is to enter judgment accordingly; and it is further

ORDERED that this constitutes the decision, order, and judgment of the court.

4/27/2020  
DATE



KATHRYN E. FREED, J.S.C.

CHECK ONE:

- CASE DISPOSED
- GRANTED  DENIED

NON-FINAL DISPOSITION

- GRANTED IN PART  OTHER

APPLICATION:

- SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

- INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

- REFERENCE