

**State Farm Mut. Auto. Ins. Co. v
Bruce L. Feldman, M.D., PLLC**

2022 NY Slip Op 33274(U)

September 30, 2022

Supreme Court, New York County

Docket Number: Index No. 151076/2020

Judge: David B. Cohen

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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. DAVID B. COHEN PART 58

Justice

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INDEX NO. 151076/2020

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Plaintiff,

MOTION SEQ. NO. 002

- v -

BRUCE L. FELDMAN M.D. PLLC, EDWIN CASTILLO, LAC., CROSSTOWN MEDICAL P.C., DAHU ACUPUNCTURE, P.C., DAVID ISRAEL, M.D., DEAN CHIROPRACTIC, P.C., DM CHIROPRACTIC, P.C., ELLIOT J. FISHMAN, P.C., GDB PHYSICAL THERAPY P.C., HEALTHWISE MEDICAL SERVICES P.C., METRO PAIN SPECIALIST PROFESSIONAL CORPORATION D/B/A METRO PAIN SPECIALIST P.C., MFS SUPPLY CORP., MYEHM RX INC., NEW YORK CORE CHIROPRACTIC P.C., NILE REHAB PHYSICAL THERAPY, P.C., PDA NY CHIROPRACTIC, P.C., PROTECTION PHYSICAL THERAPY P.C., QI LONGFELLOW ACUPUNCTURE P.C., RAPID IMAGING LLC, RIDGEWOOD DIAGNOSTIC LABORATORY, LLC, SCARBOROUGH CHIROPRACTIC, P.C., VITRUVIAN REHAB, P.T. P.C., SURIEL LOPEZ, VERONICA OCASSIO, SAMMY SANTIAGO, SR., SAMMY SANTIAGO, JR., M & M SUPPLIES GROUP, INC.,

DECISION, ORDER AND JUDGMENT

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 86, 87

were read on this motion to/for SUMMARY JUDGMENT

In this declaratory judgment/no-fault action, plaintiff State Farm Mutual Automobile Insurance Company moves, pursuant to CPLR 3212, for summary judgment on its claims against provider defendants Edwin Castillo, LAC, DM Chiropractic, P.C., Healthwise Medical Services P.C., Metro Pain Specialist Professional Corporation d/b/a Metro Pain Specialist P.C., Protection Physical Therapy P.C., and M&M Supplies Group, Inc. (collectively, provider defendants). While plaintiff also sought summary dismissal of the counterclaims of defendants Bruce L.

Feldman M.D. PLLC and MFS Supply Corp., it has since discontinued its claims against them (NYSCEF Doc. No. 85), and thus withdraws that portion of its motion against them (NYSCEF Doc. No. 86).

I. PERTINENT FACTS

A. Statements of Material Fact

This case arises from a motor vehicle accident on December 4, 2018. According to plaintiff, the only undisputed material fact is that the occupants in the car during the accident at issue, defendants Lopez, Ocassio, Santiago, Sr., and Santiago, Jr. (claimants), failed to appear on two occasions for duly-scheduled examinations under oath (EUOs), thereby violating a condition precedent to no-fault insurance coverage. (NYSCEF 65). In their counter-statement of facts, provider defendants deny the allegation. (NYSCEF 82).

B. Other Undisputed Facts

After the accident, which took place on December 4, 2018, claimants filled out NF-2 forms. Thereafter, by letters dated and mailed on February 15, 2019, plaintiff requested that claimants appear for EUOs on March 4, 2019. After they failed to appear on March 4th, by letters dated and mailed on March 6, 2019, plaintiff rescheduled the EUOs for March 25, 2019, on which date claimants again failed to appear. (NYSCEF 57).

On March 27, 2019 and again on April 1, 2019, plaintiff sent another letter to Lopez, rescheduling his EUO to April 15, 2019. He failed to appear. (*Id.*).

Plaintiff processed claimants' claims as follows:

(1) Plaintiff received a bill for Santiago, Sr. on April 8, 2019, which was reviewed and denied by plaintiff on May 8, 2019; the denial of claim form reflects that plaintiff requested

additional verification from claimant on March 25, 2019 and received it on April 8, 2019 (NYSCEF 58);

(2) On February 12, 2019, plaintiff received a claim for Santiago, Jr., requested verification on March 25, 2019, and denied the claim on May 8, 2019 (NYSCEF 59);

(3) Plaintiff received Ocasio's claim on February 12, 2019, requested verification on March 25, 2019, and denied the claim on May 8, 2019 (NYSCEF 60); and

(4) Plaintiff received Lopez's claim on March 1, 2019, requested verification on April 15, 2019, and denied the claim on May 8, 2019 (NYSCEF 61).

II. CONTENTIONS

Plaintiff contends that it properly denied the claims at issue based on claimants' failure to appear for their scheduled EUOs and, therefore, it is not required to provide no-fault coverage to claimants. (NYSCEF 63).

Provider defendants maintain that plaintiff submits no evidence from anyone with personal knowledge of the mailing of the EUO letters or claimants' alleged non-appearance at the EUOs. Additionally, they argue that plaintiff fails to prove that it complied with the statutory timeframes for requesting additional verification and EUOs and issuing denials of claims since it fails to submit evidence of when it received the claims. (NYSCEF 66).

In reply, plaintiff contends that it complied with the applicable timeframes as it either demanded the EUOs before it received the bills from provider defendants or within the 15-day statutory timeframe. Moreover, as the claimants did not appear for the EUOs, coverage is thereby vitiated and it did not have to deny the claims timely. (NYSCEF 83).

III. ANALYSIS

Pursuant to 11 NYCRR 65-3.5 (b) and (d), an insurer has the right to seek additional verification, including an EUO, if, based on objective standards, it believes that such verification is necessary to establish proof of the claim. Attendance at a timely and properly scheduled EUO is a condition precedent to coverage, and a claimant's failure to appear vitiates coverage. (*See Kamara Supplies v GEICO Gen. Ins. Co.*, 192 AD3d 588, 590 [1st Dept 2021]).

“[T]o meet its *prima facie* burden for summary judgment where it has denied a claim for no-fault benefits based on a patient's failure to appear for an [EUO], the insurer must establish that it requested [EUOs] in accordance with the procedures and time frames set forth in the no-fault implementing regulations and that the patient did not appear” (*American Tr. Ins. Co. v Martinez*, 202 AD3d 526, 526 [1st Dept 2022]). An insurer generally “must provide proof that the EUO requests were timely mailed, within 15 business days of the receipt of the prescribed verification forms, in compliance with 11 NYCRR 65-3.5” (*State Farm Mut. Auto. Ins. Co. v Surgicore of Jersey City, LLC*, 195 AD3d 454, 455 [1st Dept 2021]). However, the 15-day deadline does not apply if verification, including EUOs, is requested before the claim forms are received. (*Id.* at 455-456).

Since plaintiff submits affidavits from people with personal knowledge of the mailing of the EUO letters and of claimants' non-appearance at the EUOs, it satisfies its burden of proving that the letters were mailed and that the claimants failed to appear for their EUOs. (*See Progressive Cas. Ins. Co. v Metro Psychological Servs., P.C.*, 139 AD3d 693, 694 [2d Dept 2016]; *Hertz Corp v Active Care Med. Supply Corp.*, 124 AD3d 411, 411 [1st Dept 2015]).

Plaintiff also demonstrates that it mailed its EUO notices and verification requests before it received the claims of Santiago, Sr. and Lopez and, thus, it did not have to comply with the 15-

day deadline with respect to those claimants. As to Ocassio and Santiago, Jr., plaintiff submits proof that it requested their EUOs within three days of receipt of their claim forms, and thus within the 15-day timeframe. Further, since claimants did not appear for their timely-scheduled EUOs, coverage is vitiated, and plaintiff was not required to deny the claims within the statutory timeframe. (*See PV Holding Corp. v Hank Ross Med., P.C.*, 188 AD3d 429, 430 [1st Dept 2020]).

In opposition to plaintiff's *prima facie* showing, provider defendants raise no triable issue.

Accordingly, it is hereby:

ORDERED, that plaintiff's motion for summary judgment is granted as against defendants Edwin Castillo, LAC, DM Chiropractic, P.C., Healthwise Medical Services P.C., Metro Pain Specialist Professional Corporation d/b/a Metro Pain Specialist P.C., Protection Physical Therapy P.C., and M&M Supplies Group, Inc., it is further

ORDERED and ADJUDGED, that:

- (1) plaintiff has no duty to pay no-fault benefits in the form of sums, monies, damages, awards, judgments, or benefits to Edwin Castillo, LAC, DM Chiropractic, P.C., Healthwise Medical Services P.C., Metro Pain Specialist Professional Corporation d/b/a Metro Pain Specialist P.C., Protection Physical Therapy P.C., and M&M Supplies Group, Inc, their agents, employees, assigns or heirs, arising out of any current or future proceeding, including, without limitation, arbitrations and lawsuits seeking to recover no-fault benefits with respect to the collision that occurred on December 4, 2018, referenced in the complaint, and referenced by claim number 32-6932-T10; and

(2) all no-fault lawsuits, arbitrations, awards, judgments, and claims filed by Edwin Castillo, LAC, DM Chiropractic, P.C., Healthwise Medical Services P.C., Metro Pain Specialist Professional Corporation d/b/a Metro Pain Specialist P.C., Protection Physical Therapy P.C., and M&M Supplies Group, Inc., arising from the December 4, 2018 loss referenced in the complaint, and referenced by claim number 32-6932-T10, are hereby stayed; and it is further

ORDERED, that the motion is withdrawn as to defendants Bruce L. Feldman M.D. PLLC and MFS Supply Corp., and the complaint is severed and dismissed as against said defendants; and it is further

ORDERED, that since plaintiff was unable to serve defendants Lopez, Santiago, Sr., and Santiago, Jr. within 120 days of commencement of this action (NYSCEF Doc. 31) and has not requested an extension of time to do so, its claims against those defendants are severed and dismissed;¹ and it is further

ORDERED, that the clerk is directed to enter judgment accordingly.

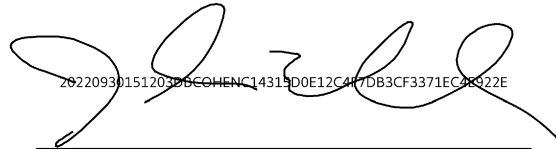
9/30/2022
DATE

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED GRANTED IN PART OTHER

SETTLE ORDER SUBMIT ORDER

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DAVID B. COHEN, J.S.C.

¹ The claims against all other defendants served in this action were resolved by the granting of default judgments against them.