

**State Farm Mut. Auto. Ins. Co. v East Coast Med.
Care, P.C.**

2023 NY Slip Op 31032(U)

March 30, 2023

Supreme Court, New York County

Docket Number: Index No. 656409/2021

Judge: Melissa A. Crane

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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. MELISSA A. CRANE PART 60M

Justice

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STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, STATE FARM FIRE AND CASUALTY COMPANY, STATE FARM INDEMNITY COMPANY	INDEX NO. <u>656409/2021</u> MOTION DATE <u>01/23/2023</u> MOTION SEQ. NO. <u>001</u>
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Plaintiff,

- v -

EAST COAST MEDICAL CARE, P.C.,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 were read on this motion to/for JUDGMENT - SUMMARY.

Plaintiffs, State Farm Mutual Automobile Insurance Company (“SFMAIC”), State Farm Fire and Casualty Company (“SFFCC”), and State Farm Indemnity Company (“SFIC”) (collectively, “State Farm”), move, pursuant to CPLR 3212, for summary judgment as against defendant East Coast Medical Care, P.C. (“ECMC”). Defendant ECMC opposes the motion and cross-moves for summary judgment dismissing the complaint.

In this no-fault action, State Farm seeks a declaratory judgment that defendant ECMC has no right to receive payment for 142 no-fault claims for services ECMC performed for various insureds because ECMC purportedly failed to comply with State Farm’s verification efforts. In support of its motion, State Farm attaches spreadsheet to its summons and complaint (Doc. 2 [Exh 1, Appendix of Claims]) that lists the 142 claims at issue in this case, and identifies: (i) each claim/bill where an EUO and verification was requested by State Farm; (ii) the respective dates of the requests and appearance dates; and (iii) the dates that the claims were denied (Doc 1 [Summons & Complaint], ¶¶ 5, 31, 43).

Specifically, State Farm asserts that ECMC did not adequately respond to post-examination verification demands concerning examinations and extracorporeal shockwave therapy services that ECMC performed for various State Farm insureds. State Farm also seeks to

permanently stay “all arbitrations, lawsuits, and/or claims by Defendant relating to No-Fault claims of the Defendant” (*Id.*).

Discussion

Summary judgment is a drastic remedy which will be granted only when the party seeking summary judgment has established that there are no triable issues of fact (*see* CPLR 3212[b]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *DeCintio v Lawrence Hosp.*, 33 AD3d 329, 329 [1st Dept 2006]). To prevail, the party seeking summary judgment must make a prima facie showing of entitlement to judgment as a matter of law by tendering evidentiary proof in admissible form (*see Olan v Farrell Lines*, 64 NY2d 1092, 1093 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). If the movant makes that initial showing, the burden shifts to the party opposing the motion rebut that showing by establishing that there are material issues of fact that require a trial (*see Kaufman v Silver*, 90 NY2d 204, 208 [1997]).

The court must scrutinize the motion papers in a light most favorable to the party opposing the motion and must give that party the benefit of every favorable inference (*see Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]), and summary judgment should be denied where there is any doubt as to the existence of a triable issue of fact (*see Ahmad v City of New York*, 129 AD3d 443, 444 [1st Dept 2015]). However, bald, conclusory assertions or speculation and “[a] shadowy semblance of an issue” are insufficient to defeat a summary judgment motion (*Belle Lighting LLC v Artisan Constr. Partners LLC*, 178 AD3d 605, 606 [1st Dept 2019]).

Under the existing no-fault regulations, “[a]dditional [provider] verification includes all information that is necessary for the insurer to determine whether the claim submitted by the healthcare provider is payable” (11 NYCRR § 65-3.5; 11 NYCRR § 65-3.8 [a] [1]). Specifically, “11 NYCRR 65-3.5 (c) provides that ‘[t]he insurer is entitled to receive all items necessary to verify the claim directly from the parties from whom such verification was requested’ (*Nyack Hosp. v General Motors Acceptance Corp.* (27 AD3d 96, 100-101 [2nd Dept 2005], *affd as mod and remanded by* 8 NY3d 294, 300 [2007])). A provider has 120 days to respond to a verification demand and an insurer must issue a denial within 30 days afterwards (i.e., 150 days after the demand was sent) (*see Chapa Products Corp. v MVAIC*, 66 Misc 3d 16, 19 [App Term, 2nd Dept 2019]).

“A no-fault insurer may request additional verification and may deny the claim pursuant to the ‘120-day rule’ if no response is received” (*State Farm Mut. Auto. Ins. Co. v Metro Pain Specialists PC*, 2020 N.Y. Misc. LEXIS 4606, at *14 [Sup Ct, Bronx County Apr. 30, 2020, No. 24709/2019E]). “The current version of 11 NYCRR 65-3.8 (b) (3) . . . does not obligate an insurer to pay or deny a claim prior to its receipt of all requested verification—it merely provides that an insurer ‘may’ issue a denial” (*id.*). “[A]n insufficient response requires action by the insurance company to either deny the claim for failure to provide all the requested information or, more appropriately in light of the goals of the No-Fault Law, to send a follow-up verification request, acknowledging the material received and further requesting the omitted material” (*All Health Med. Care, P.C. v Govt. Employees Ins. Co.*, 2 Misc 3d 907, 913 [Civ Ct, Queens County 2004]).

Here, the parties do not contest that the demands or the denials were untimely. The issues in this action are limited to whether State Farm’s requests were reasonable and whether ECMC’s verifications responses were adequate.

I. State Farm’s Motion

State Farm argues that it is entitled to summary judgment because defendant “failed to provide [it verification documents] within 120 days, [and] all the additional verification that was timely requested pursuant to 11 NYCRR § 65-3.5 (colloquially the “120 Day Rule”) based on the examination under oath (“EUO”) testimony of Omar Ahmed, M.D. on March 19, 2021” (Doc 9 [Garriga Affirmation in Support]).

The facts pertinent to State Farm’s claims are set forth in the Affidavit of its investigator, Mr. Bodnar, who explains that State Farm commenced an investigation into ECMC’s eligibility to collect no fault benefits based on whether the services: (a) were provided pursuant to arrangements between ECMC and other medical providers that complied NYS licensing laws; (b) were medically necessary; (c) were performed by authorized individuals; and (d) whether the services performed and billing submitted by ECMC complied with the applicable NYS Worker’s Compensation rules and guidelines (Doc 10 [Bodnar Aff.], ¶ 4). Questions were also raised about whether improper financial relationships led to ECMC’s patient referrals, while revealing that ECMC’s services were being performed at several different locations throughout NYC, and that many providers at those locations “[were]...investigated by State Farm due to concerns [of].

.. [rendering] medically unnecessary services and/or [engaging] . . . in questionable financial and referral arrangements” (*Id.*, ¶ 6). Mr. Bodnar asserts that after the March 19, 2021 EUO of Dr. Ahmed, ECMC’s sole shareholder, State Farm sent ECMC post-EUO verification demands by two letters, dated March 29, 2021 and April 29, 2021. According to Bodnar, ECMC provided some, but not all, of the documents requested (*Id.*, ¶¶ 15-16). He also states that State Farm advised ECMC that the missing documents were needed to verify ECMC’s claims’ eligibility for reimbursement, and that State Farm did not receive any of the outstanding documents or information (*Id.*, ¶¶ 17-19).

Initially, the court rejects ECMC’s first argument in opposition to State Farm’s motion that State Farm’s failure to attach a statement of material facts warrants denying the motion (Doc 21 [Affirmation in Opp.], ¶ 10-11). The Part 60 Practices and Procedures do not permit parties to submit individual statements of “undisputed” facts (*see* Part Rule 10[f][ii]). Even though this case should not have been filed in the Commercial Division in the first place, this court has agreed to keep this case for the time being and the parties must therefore abide by this Part’s Rules.

ECMC also argues that issues of fact preclude awarding summary judgment to State Farm (Doc 21 [Affirmation in Opp.] ¶ 18-19). ECMC contends that State Farm’s submissions fail to prove *prima facie* that its post-EUO verification demands were reasonable or that ECMC’s verification responses were insufficient. Specifically, ECMC claims that State Farm never sets forth the particular reasons that it needs the additional verification documents, such as comprehensive bank records, and that State Farm never explained why the documents produced by ECMC are insufficient (*Id.*, ¶ 26-27).

A. State Farm Fails to Meet Its Burden

First, State Farm submits neither its post-EUO verification demands nor ECMC’s responses or productions. The only submission concerning the post-EUO verification demands’ reasonableness and the purported inadequacy of ECMC’s responses is the Bodnar affidavit, which does not address the materials that ECMC did send in response to the verification demands at all.

Additionally, State Farm issued verification demands for documents seemingly relating to *Mallela* [i.e., fraudulent provider incorporation] issues. “An insurance carrier may, at any

time, assert a non-precludable ‘*Mallela* defense’ and deny payment based on the medical provider's fraudulent incorporation” (*Arthur Ave. Med. Services, PC v GEICO Ins. Co.*, 72 Misc 3d 342, 348 [Civ Ct, Kings County 2021]; *see generally State Farm Mut. Auto. Ins. Co. v Robert Mallela*, 4 NY3d 313, 317 [2005] [“A fraudulently formed medical corporation is not eligible for reimbursement under the No-Fault Law.”]). However, insurers seeking *Mallela* materials as part of claim verification must set forth a “specific objective justification” for the demands (*High Definition MRI, P.C. v The Travelers Companies, Inc.*, 2020 N.Y. Slip Op. 30080[U], 2 [Sup Ct, New York County 2020]).

State Farm has not met its burden of demonstrating that its verification demands were reasonable or that ECMC’s responses were inadequate. Bodnar’s explanation of the demands and State Farm’s general concerns is not adequate to shift the burden to ECMC under these circumstances (*see e.g. Omega Diagnostic Imaging, P.C. v MVAIC*, 29 Misc 3d 129(A) [App Term, 1st Dept 2010] [finding that verification requests were improper because, *inter alia*, the insurer could not provide adequate reasons for the requests under 11 NYCRR 65–3.2(c)]).

B. ECMC Raises Triable Issues of Fact

Further, even if State Farm had met its burden, ECMC raises triable issues of fact by submitting copies of its verification response letters and the annexed verification documents that it sent to State Farm (Docs 22-23 [ECMC’s response letters and verification documents]; *see State Farm Mut. Auto. Ins. Co. v Metro Pain Specialists PC* (2020 NY Misc LEXIS 4606, *18-19 [Sup Ct, Bronx County Apr. 30, 2020, No. 24709/2019E] [denying insurer’s motion for summary judgment where the provider submitted its partial response to verification demand because “questions of fact have been presented including whether defendant's verification response was sufficiently substantive” and “whether plaintiffs' request was overbroad or unreasonable”]; *see also* Doc. No. 26 [unreported decision and order in *State Farm Mut. Auto. Ins. Co. v P.R. Medical, P.C.*, Index No. 710811/2020 (Sup Ct, Queens County Oct 4, 2021) (holding that there are triable issues of fact as to whether the “response was sufficiently substantive, [and] whether [the insurer’s] verification requests were overly broad or unreasonable,” where the provider submitted responsive documents to an insurer’s post-EUO demands)]).

Accordingly, State Farm’s motion for summary judgment is denied.

II. ECMC's Cross-Motion

ECMC argues that they are entitled to summary judgment dismissing State Farm's complaint¹ under the doctrine of collateral estoppel because it prevailed in two prior arbitration proceedings involving insureds whose claims are at issue in this case, and the prior arbitration proceedings already determined that State Farm cannot deny ECMC's No-Fault claims based on the post-EUO verification demands at issue in this case (Doc 21 [Affirmation in Opp.] ¶ 33-40). The two arbitration proceedings are: (a) *East Coast Medical Care, P.C. a/a/o Mendoza Jayelle v. State Farm Mutual Automobile Insurance Company*, AAA Case No. 17-21-1204-2098 for claim Number 3211V623Z (Decision 6/10/2022) (the "Jayelle Case"); and (b) *East Coast Medical Care, P.C. a/a/o Rouse Jamarl v State Farm Mut. Auto. Ins. Co.*, AAA Case No. 17-21-1217-5337 for claim Number 3215J765N (Decision 8/15/2022) (the "Jamarl Award").

State Farm replies that collateral estoppel does not apply here because State Farm has obtained other arbitration awards that denied the provider's reimbursement claims and upheld certain State Farm denials of ECMC's claims based on the 120-day rule (Doc 29 [Reply Affirmation] ¶ 6). It also argues that several of ECMC's arbitrations have been dismissed without prejudice pending the provider's full compliance with verification and has also submitted several awards denying ECMC's claims and dismissing the arbitration proceedings without prejudice (*Id.*, ¶ 6).

In opposition to ECMC's cross motion, State Farm submits two sets of arbitration awards: a set of 10 awards denying ECMC's claims (Doc 30 [Exh A, Denying Awards]), and a set of 7 awards dismissing arbitration proceedings against ECMC without prejudice pending full compliance with verification (Doc 31 [Exh B, Dismissing Awards]).

The doctrine of collateral estoppel precludes a party "from relitigating in a subsequent action an issue clearly raised and decided against that party in a prior action" (*Ji Sun Jennifer Kim v Goldberg, Weprin, Finkel, Goldstein, LLP*, 120 AD3d 18, 23 [1st Dept 2014]). To successfully invoke the doctrine, "the issue in the second action must be identical to an issue which was raised, necessarily decided and material in the first action," and "the party to be precluded must have had a full and fair opportunity to litigate the issue in the earlier action" (*id.*

¹ ECMC does not seek summary judgment in connection with its own counterclaims.

at 34). It is well settled that collateral estoppel applies to arbitration awards with the same force and effect as to judgments of courts, and “may serve as the basis for the defense of collateral estoppel in a subsequent action” (*Acevedo v Holton*, 239 AD2d 194, 195 [1st Dept 1997]; *American Ins. Co. v Messinger*, 43 NY2d 184, 191 [1977]). Furthermore, collateral estoppel may be applied to no-fault arbitration awards, even if the awards have not been judicially confirmed (*see Martin v Geico Direct Ins.*, 31 AD3d 505, 506 [2d Dept 2006]; *Label v Allstate Ins. Co.*, 269 AD2d 502, 502 [2d Dept 2000]).

ECMC’s cross motion is denied. It is well settled that the “burden rests upon the proponent of collateral estoppel to demonstrate the identity and decisiveness of the issue, while the burden rests upon the opponent to establish the absence of a full and fair opportunity to litigate the issue in [a] prior action or proceeding” (*Ryan v New York Telephone Co.*, 62 NY2d 494, 501 [1984]). ECMC’s submissions do not establish that the issues surrounding the 143 claims underlying this action are collaterally estopped by the two seemingly cherry-picked arbitration decisions that it submits in support of its cross motion (*see* Docs 24-25 [ECMC’s Arbitration Awards]).

In the Jayelle arbitration, the arbitrator did not find that ECMC’s responses were adequate or that State Farm’s verification demands were untimely, unreasonable, or otherwise improper under the no-fault regulatory structure or applicable case law (*see* Doc 24). Nonetheless, due to both parties’ lack of proof submitted at that proceeding, the arbitrator found in favor of ECMC and vacated State Farm’s denial of the Jayelle claims at issue (*id.* at 12). In the Jamarl arbitration, the arbitrator merely applied collateral estoppel, apparently based on the arbitrator’s findings in the Jayelle proceeding, to issue an award in favor of ECMC (*see* Doc 25). Thus, ECMC has not met its burden of demonstrating prima facie entitlement to summary judgment dismissing the complaint on the basis of these two arbitration awards.

Further, the findings in the two arbitration awards entered in favor of ECMC are contradicted by arbitration awards that State Farm submits in opposition to the cross motion (*see* Doc 30 [various arbitration awards that denied ECMC claims relating to the matters at issue in the complaint]; Doc 31 [additional arbitration awards dismissing ECMC claims without prejudice]). For instance, in the Luis arbitration commenced by ECMC against State Farm (Doc 30), the arbitrator found in State Farm’s favor, noting that ECMC “has not fulfilled its obligation

to respond to [State Farm’s] verification requests,” and concluding that “the requests made by [State Farm] were timely, reasonable, and proper . . . [as well as] reasonable and necessary for [State Farm] to process this claim on the merits” (*id.* at 3-4).

Thus, ECMC’s cross motion for summary judgment dismissing State Farm’s complaint is denied.

Conclusion

The court has considered the parties remaining arguments and finds them unavailing. Accordingly, it is

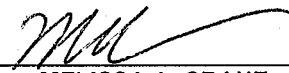
ORDERED that Plaintiff’s motion for summary judgment is denied (MS 01); and it is further

ORDERED that Defendant’s cross motion for summary judgment is denied (MS 01); and it is further

ORDERED that the parties must appear for a compliance conference on May 2, 2023 at 11:00 a.m.

3/30/2023

DATE



MELISSA A. CRANE, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE