

Nasprinay v State Farm Auto. Ins. Co. PIP/BI Claims

2025 NY Slip Op 30171(U)

January 13, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. 729127/19

Judge: Odessa Kennedy

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CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS PART 41-NFA

JOHN A. NASPRINAY
A/A/O MARINE, ROSALIA,

Index No. 729127/19
Motion Cal. # 22/23-NFA_Motion Seq. #1/2

Plaintiff(s),

DECISION AND ORDER

Recitation, as required by CPLR §2219(a) of the papers considered in review of this Motion:

-against-

Papers

STATE FARM AUTOMOBILE INS. CO.
PIP/BI CLAIMS

D's motion for summary judgment.....	1
P's XM.....	2
D's opposition.....	3

Defendant(s).

Upon the foregoing cited papers, after oral argument, the Decision/Order on Defendant's motion for summary judgment and Plaintiff's cross-motion for summary judgment is as follows:

Plaintiff's cross-motion is GRANTED TO THE EXTENT that Plaintiff established its timely and proper mailing of the bills to the Defendant. Defendant admits receiving the bills timely in their own papers.

Defendants motion is GRANTED TO THE EXTENT that Defendant establishes timely mailing of Defendant's EUO scheduling letters. Plaintiff, in response, provides an affidavit stating that phone calls were made to the number and investigator on the EUO letters in order to reschedule the EUO. In response, defense counsel did not submit an affidavit or evidence to show there is a question of fact as to whether the affidavit is incorrect. As such the Court finds as a matter of law that the affiant requested the adjournment as specified in Plaintiff's papers. The Court notes that the attorney claims that the affidavit is feigned, however, the Court rejects counsels contention as counsel is not a fact witness.

There is an issue of fact as to whether Defendant properly scheduled the EUO's and whether Defendant properly mailed the denials on the basis that the mailing document specifies "NOT FOR USPS USE."

This constitutes the decision and order of the Court.

Counsel for Plaintiff – Printed Name and Initials: Richard Rozhik, Esq.

Counsel for Defendant – Printed Name and Initials: Stuart Flamen, Esq

Date: 1.13.25
Brooklyn, New York



Hon. Odessa Kennedy
Civil Court Kings County