

State Farm Fire & Cas. Co. v Quinones

2025 NY Slip Op 30754(U)

March 7, 2025

Supreme Court, New York County

Docket Number: Index No. 152505/2021

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04

Justice

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INDEX NO. 152505/2021

STATE FARM FIRE AND CASUALTY COMPANY,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 002

- v -

FELIX A. QUINONES, MIGUEL BURGOS, KEVIN GONZALEZ, ADVANCED COMPREHENSIVE LABORATORY LLC, AMBULATORY SURGICAL CENTER OF ENGLEWOOD, LLC, AMIT KHANEJA NEUROLOGY PRACTICE PLLC, ASCE ANESTHESIA PC, BLISS ACUPUNCTURE P.C., BL PAIN MANAGEMENT, PLLC, BPC CHIROPRACTIC P.C., BP DYNAMIC REHAB PT P.C., BRONX SPECIALTY PHARMACY INC., BV PHYSICAL THERAPY P.C., CVS RX, INC., ENGLEWOOD ORTHOPEDICS GROUP PC, FAST CARE MEDICAL DIAGNOSTICS, PLLC, GRAND MEDICAL SUPPLY CORP, HYUN PHYSICAL THERAPY, P.C., JORDAN FERSEL M.D., P.C., JOSEPH A. RAIA, M.D., P.C., LENCO DIAGNOSTIC LABORATORIES, INC., LZ MEDICAL DIAGNOSTIC P.C., MG CHIROPRACTIC, P.C., MIDDLE VILLAGE DIAGNOSTIC IMAGING, P.C., NAYALE LAFLEUR, N.P., PETRYCHENKO PHYSICIAN P.C., TIME TO CARE PHARMACY INC., TROMBMED NY, INC., YEVGENIY MARGULIS, PH.D,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 212, 213, 215

were read on this motion for JUDGMENT - SUMMARY

Upon the foregoing documents, plaintiff's motion for summary judgment is granted in part, to the extent set forth below.

In this declaratory judgment action, plaintiff seeks to disclaim coverage for medical treatment provided to defendants Felix A. Quinones, Miguel Burgos and Kevin Gonzalez by the

other defendants, all medical providers, for injuries Quinones, Burgos, and Gonzalez allegedly sustained in an automobile collision on February 26, 2020, involving a car owned and operated by Quinones in which Burgos and Gonzalez were passengers. Burgos and Gonzalez appeared at examinations under oath (“EUOs”) and testified, in pertinent part, that they were traveling to a Sonic restaurant for dinner and that the subject collision occurred on a highway—the name of which they did not know—when Quinones’s car was hit “hard” from behind, leaving a big dent in the bumper of Quinones’s car (NYSCEF Doc Nos. 146 [Burgos EUO tr at 19-22], 147 [Gonzalez EUO tr at 23-26]).

Plaintiff now moves for summary judgment on the grounds that: (1) it has established that the subject automobile collision was staged; and (2) Quinones failed to appear for examinations under oath (“EUO”) on July 2, 2020, August 18, 2020, and October 27, 2020, thereby breaching a condition precedent to coverage under his policy with plaintiff. In support of its motion, plaintiff submits an affidavit by Claim Specialist Dominique Wafer (NYSCEF Doc No. 130), transcripts from the EUOs of Burgos and Gonzalez (NYSCEF Doc Nos. 146, 147), the certified police report and amended police report from the subject collision (NYSCEF Doc No. 144), and the declarations page of Quinones’s insurance policy with plaintiff (NYSCEF Doc No. 145).

In her affidavit, Wafer states that plaintiff’s investigation of the subject claim uncovered the following information:

The alleged accident involving Felix Quinones and his 2015 Hyundai Veloster occurred on February 26, 2020, just two (2) days after Mr. Quinones insured the vehicle with State Farm ...

Mr. Quinones insured the 2015 Hyundai Veloster with State Farm at a policy address of 61-25 98th Street, Apt. 9L, Rego Park, New York. However, Mr. Gonzalez testified he lived at 61-25 98th Street, Apt. 9L, Rego Park, New York with only his wife and daughter. Further, Mr. Gonzalez testified he did not know where Mr. Quinones lived or who owned the vehicle involved in the subject loss...

Mr. Quinones insured the vehicle at [one address], registered the vehicle at [a different address], and listed his address on his NF-2 Application for No-Fault Benefits as [a third address] ...

The subject loss was not reported to State Farm until more than two (2) weeks after it allegedly occurred, at which time it was reported by a medical provider ...

Mr. Burgos was not listed as a passenger of the State Farm insured vehicle on the original police report for the February 26, 2020 loss ...

Mr. Quinones reported to State Farm that he was involved in a subsequent motor vehicle accident on March 22, 2020 ...

Mr. Quinones listed [one] phone number ... when he obtained the State Farm insurance policy for the 2015 Hyundai Veloster but listed ... [a different] phone number on his NF-2 Application for No-Fault Benefits ...

(NYSCEF Doc No. 130, Wafer aff. at ¶16[a]-[f], [g], [j]).

As to Burgos and Gonzalez's EUO testimony, Wafer noted that:

Mr. Gonzalez was involved in a prior motor vehicle accident in 2015, in which he claimed he was rear ended. The other driver involved in that accident claimed that Mr. Gonzalez reversed into the front of the adverse vehicle ...

Mr. Gonzalez described the State Farm insured 2015 Hyundai Veloster, which is a two (2) door coupe, as a Toyota with an unknown number of doors and Mr. Burgos described it as a Nissan SUV with four (4) doors...

Mr. Burgos claimed he had known Felix Quinones for five (5) years and had known Kevin Gonzalez for four (4) years, but he did not know their last names, where they lived, or where they worked...

Mr. Gonzalez claimed he had known Mr. Quinones and Mr. Burgos for over five (5) years, but did not know where they lived or where they worked...

Mr. Gonzalez testified he spoke with Mr. Quinones at about 7:30 p.m. to make plans to go to Sonic together for dinner. Further, Mr. Gonzalez claimed that it was not until after Mr. Quinones picked up Mr. Gonzalez at about 8:00 p.m. that Mr. Quinones called Mr. Burgos to invite him to join them at Sonic for dinner. However, Mr. Burgos claimed he spoke with Mr. Quinones at 12:00 p.m. to make plans to go to Sonic together and Mr. Quinones mentioned at that time that Mr. Gonzalez would also be going with them. Further, Mr. Burgos claimed he did not hear from Mr. Quinones from 12:00 p.m. until Mr. Quinones called to say he was outside Mr. Burgos' home with Mr. Gonzalez ...

Mr. Gonzalez claimed he and Mr. Quinones picked Mr. Burgos up from a residential area in Jamaica, New York but Mr. Burgos claimed Mr. Gonzalez and Mr. Quinones picked him up at his home [in Brooklyn]...

Mr. Gonzalez and Mr. Burgos could not identify any part of the route Mr. Quinones took while driving from where Mr. Burgos was picked up toward the Sonic restaurant ...

Mr. Gonzalez and Mr. Burgos could not identify which highway they were on at the time of the subject loss ...

Mr. Gonzalez and Mr. Burgos both claimed they were distracted by their cell phones at the time of the subject loss and were unable to describe how the subject loss allegedly occurred. Mr. Gonzalez did not even know if it was raining or snowing at the time of the subject loss ...

Mr. Gonzalez and Mr. Burgos were unable to describe how fast Mr. Quinones was driving or the traffic conditions prior to the subject loss allegedly occurring ...

Mr. Gonzalez and Mr. Burgos indicated the impact occurred to the rear of the vehicle toward one side, but could not identify which side of Mr. Quinones' vehicle was struck or damaged as a result of the subject loss ...

Mr. Gonzalez did not know if the airbags deployed in Mr. Quinones' vehicle, if the vehicle was pushed in any direction after the impact, if the vehicle came to a sudden stop after the impact, or how his own body moved as a result of the impact ...

Mr. Gonzalez and Mr. Burgos both claimed they reported injuries at the scene of the accident and were treated by EMTs who came to the scene, yet they refused to be transported to a hospital. The police report for the subject loss does not indicate that any injuries were reported by Mr. Gonzalez or Mr. Burgos...

Mr. Gonzalez and Mr. Burgos both testified they spoke with Mr. Quinones by phone the day after the subject loss and Mr. Quinones recommended they go to a medical office on Metropolitan Avenue in Queens, New York...

Mr. Burgos was told the MRI of his left shoulder did not show any particular injury but that he required surgery to "research" his left shoulder injury by inserting a camera into his left shoulder. He was told if the camera showed any damage, then it would be repaired during surgery ...

Mr. Gonzalez and Mr. Burgos both claimed injuries to their neck, back, left shoulder, and right knee as a result of the subject loss and received substantially similar medical treatment following the subject loss ...

(*id.* at 16[i], [l], [m], [o], [q]-[t], [v], [w]-[aa]).

Finally, citing a CarFax report and Accurint background search results attached as exhibits to her affidavit, Wafer noted that:

The 2015 Hyundai Veloster involved in the February 26, 2020 alleged accident was previously totaled in a motor vehicle accident and had since been salvaged...

Mr. Quinones was involved in prior motor vehicle accidents on August 30, 2019 and February 7, 2017...

The phone number [Quinones provided in connection with his insurance policy] ... was used by (i) Geovanni Constanza, who was involved in an alleged accident on December 9, 2019 in which it was alleged Mr. Constanza cut in front of the adverse vehicle before slamming on his brakes; (ii) Bryan Mocha, who was involved in an alleged rear-end chain accident on November 10, 2019; (iii) Stephany Ocampo Pena, who was involved in an alleged accident on August 12, 2019; and (iv) Richard Perez, who was involved in an alleged accident on July 3, 2018...

Mr. Gonzalez and Mr. Burgos both described the impact to the rear of Mr. Quinones' vehicle as "hard." However, the Event Data Recorder from the adverse vehicle, a 2013 Nissan, indicated there was no event recorded, indicating no event occurred that resulted in a significant change in velocity for the 2013 Nissan, according to a representative from Liberty Mutual Insurance, the insurer for the other vehicle involved in the subject loss...

(*id.* at ¶16[f], [h], [k], [u]).

In opposition, defendants argue that the EUO transcripts of Burgos and Gonzalez are not admissible under CPLR 3116 because they were not executed or mailed to deponents but that, even if these transcripts were admissible, they are insufficient to establish that the collision was staged as their testimony as to the collision itself was consistent, regardless of any other discrepancies or contradictions. As to the branch of plaintiff's motion based upon Quinones's failure to appear for an EUO, defendants note that the only claims that were denied on this basis were from defendant Grand Medical Supply Corp. and argues that plaintiff has not established that it served the EUO notices in the time frame set forth in 11 NYCRR 65-3.5(b) and 11 NYCRR 65-3.6(b).

In reply, plaintiff maintains that these EUO transcripts are admissible under CPLR 3116 because Burgos executed the transcript of his EUO (NYSCEF Doc No. 146, Burgos EUO tr. at 66) and plaintiff mailed Gonzalez the transcript of his EUO, which he failed to sign and return (NYSCEF Doc No. 169, mailing letter).

DISCUSSION

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [internal citations omitted]).

That branch of plaintiff’s motion for summary judgment declaring that it has no obligation to pay claims submitted by Grand Medical Supply Corp. based on Quinones’s failure to appear for EUOs is granted. Plaintiff has established its compliance with 11 NYCRR 65-3.5 through Wafer’s affidavit attesting to plaintiff’s mailing of the EUO scheduling letters prior to receiving the subject bills in conformity with standard office procedure, copies of the EUO scheduling letters with affidavits of service attesting to their mailing (*see* NYSCEF Doc Nos. 154, 158, 167), contemporaneous statements by plaintiff’s counsel on the record at those EUOs recording Quinones’s failure to appear (*see* NYSCEF Doc Nos. 155, 159, 168), and the denial of claim (NYSCEF Doc No. 170) sent to plaintiff (*see e.g. Hertz Corp v Active Care Med. Supply Corp.*, 124 AD3d 411 [1st Dept 2015]). Defendants have failed to raise a triable issue of fact in opposition.

Accordingly, as Quinones's coverage is vitiated by his failure to satisfy this condition precedent, this branch of plaintiff's motion is granted (*see PV Holding Corp. v Hank Ross Med., P.C.*, 188 AD3d 429,430 [1st Dept 2020]).

However, that branch of plaintiff's motion for summary judgment on the basis that the subject collision was staged is denied. While "[a]n intentional and staged collision caused in the furtherance of an insurance fraud scheme is not a covered accident under a policy of insurance" (*Nationwide General ins. Co. v Bates*, 130 AD3d 795, 796 [2d Dept 2015] [internal citations and quotations omitted]), plaintiff has not established that the subject collision was staged. Specifically, to the extent Wafer relies upon Accurint reports, Carfax reports, and information from the other vehicle's Event Data Recorder, which are inadmissible hearsay (*see State Farm Fire and Cas. Co. v R.L.*, 78 Misc 3d 1241(A) [Sup Ct, Nassau County 2023]; *see also Bathgate 1 LLC v Bruno*, 2018 NY Slip Op 31291[U], *4-5 [Civ Ct, Bronx County 2018]), her affidavit is "insufficient to support the entry of a summary judgment" (*State Farm Mut. Auto. Ins. Co. v Surgicore of Jersey City, LLC*, 2023 NY Slip Op 33590[U], *4 [Sup Ct, NY County 2023] [internal citations omitted]). In addition, although the EUO transcripts Wafer references are admissible (*see e.g. Encompass Home & Auto Ins. Co. v Makendy*, 2020 NY Slip Op 31907[U], *12 [Sup Ct, NY County 2020]), the purported inconsistencies and inaccuracies in these transcripts detailed by Wafer "raise serious credibility issues" but, ultimately, "do not pertain to the nature of the [collision] itself so as to meet the heavy burden required to obtain summary judgment" (*21st Century Sec. v All*, 2018 NY Slip Op 30814[U], *2 [Sup Ct, NY County 2018] citing *Easy Care Acupuncture, PC v Hartford Ins. Co.*, 57 Misc 3d 147[A] [App Term, 1st Dept 2017]; *see also Parisien v Esurance*, 81 Misc 3d 127(A) [App Term, 2d Dept 2023] [DMV abstract, police reports, ISO claim search records, and EUO transcripts of individuals involved in collision insufficient to

establish collision was staged on plaintiff insurer's summary judgment motion]; *State Farm Mut. Auto. Ins. Co. v Almonte* 2022 WL 22855425 [Sup Ct, Nassau County 2022]).

Accordingly, it is

ORDERED that the branch of plaintiff's motion for summary judgment as against Grand Medical Supply Corp. is granted; and it is

ORDERED, ADJUDGED, and DECLARED that plaintiff has no duty to pay any no-fault benefits in the form of sums, monies, damages, awards or benefits to defendant Grand Medical Supply Corp. with respect to claims submitted by Felix A. Quinones in connection with the February 26, 2020 loss referenced in the complaint, including but not limited to all no-fault claims; any and all uninsured, underinsured, supplementary-uninsured, or supplementary underinsured motorist-benefit claims; any and all medical-payment claims; any and all property damage claims; and any and all bodily injury-liability benefits; and it is further


ORDERED that plaintiff's motion is otherwise denied; and it is further

ORDERED that within twenty days after the date of this decision and order, plaintiff shall serve a copy of this order, with notice of entry, upon all answering defendants, as well as the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to enter judgment; accordingly, and it is further

ORDERED that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address <https://ww2.nycourts.gov/courts/1jd/supctmanh/E-Filing.shtml>); and it is further

ORDERED that the parties shall, within thirty days of the date of this decision and order, contact Part 40 at sfc-part40-clerk@nycourts.gov to request a pre-trial conference.

This constitutes the decision, order, and judgment of this Court.

<u>3/7/2025</u> DATE		 HON. JUDY H. KIM, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE