

**Commissioners of the State Ins. Fund v Metro Group,  
Corp.**

2025 NY Slip Op 32870(U)

July 28, 2025

Supreme Court, New York County

Docket Number: Index No. 453950/2021

Judge: Emily Morales-Minerva

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. EMILY MORALES-MINERVA, J.S.C.**

42M

-----X

COMMISSIONERS OF THE STATE INSURANCE  
FUND,

**INDEX  
NO. 453950/2021**

Plaintiff,

- v -

DECISION AFTER TRIAL

THE METRO GROUP, CORP., PRESIDIO  
REALTY HOLDERS, INC.,

Defendants.

-----X

APPEARANCES:

New York State Insurance Fund, New York, NY (Charlotte Ramsey, Esq., and Michael Totaro, Esq., of counsel), for plaintiff.

The Metro Group, Inc., Long Island City, NY (Mikhail Ratner, Esq., of counsel), for defendants.

EMILY MORALES-MINERVA, J.S.C.

In this action to recover unpaid workers' compensation insurance premiums, plaintiff COMMISSIONERS OF THE STATE INSURANCE FUND filed a complaint against defendants THE METRO GROUP, CORP., and PRESIDIO REALTY HOLDERS, INC., setting forth causes of action for breach of contract and account stated, and seeking damages in the amount of \$422,390.83 plus interest of 9% from the date of default and costs and disbursements in the amount of up to 22% of the judgment. Defendants answered and,

**OTHER ORDER – NON-MOTION**

following motion practice, discovery and note of issue filing, the Court scheduled a bench trial in this matter.

The bench trial commenced June 17, 2025, and concluded on June 18, 2025. Both parties appeared by counsel throughout the trial. As part of its case in chief, plaintiff called the following witnesses: (1) plaintiff's underwriter Onakpoma Oyiborhoro, and (2) plaintiff's auditor Tsien-min Lin. These witnesses testified under oath and subject to cross-examination.

Further, on consent of and without any objection from defendants, the Court entered into evidence plaintiff's exhibits numbered 1 through 11, and 13. These exhibits are: (1) the Workers' Compensation and Employers' Liability Policy between plaintiff and defendants; (2) the Renewal Policy between plaintiff and defendant the Metro Group, Inc., effective from July 01, 2018 until cancellation; (3) the Statement of Account for defendant Metro Group, Inc.'s Insurance Policy; (4) the Premium Audit Exit Interview Form, dated January 03, 2020; (5) e-mails between, among other unidentified persons, plaintiff's auditor and defendant Metro Group, Inc.'s corporate secretary and director of operations, dated January 16, 2020, January 15, 2020, and January 03, 2020, with attachments of certificates of liability insurance for subcontractors of defendant Metro Group, Inc.; (6) the audit worksheets for plaintiff's audit of defendant Metro Group, Inc.'s for the

period of July 01, 2018 to July 01, 2019; (7) the information page audit of plaintiff for defendant the Metro Group, Inc.; (8) the Workers' Compensation Statement from plaintiff to defendant the Metro Group, Inc., demanding payment of \$422,390.83, dated April 01, 2020; (9) plaintiff's Loss Run Report as of February 02, 2022; (10) defendant the Metro Group, Inc.'s Cancellation Request dated May 21, 2019; (11) plaintiff's Cancellation Notice to defendant the Metro Group, Inc. dated June 07, 2019, with an effective date of July 01, 2019; and (13) the Employer's Quarterly Federal Tax Return of defendant the Metro Group, Inc., for the 2019 calendar year, and quarters of January, February and March, and April, May, and June of that year.

Plaintiff then rested, and defendants called as a witness Krista J. Pasfield, corporate secretary and director of operations for defendant the Metro Group, Inc; she testified under oath and subject to cross-examination. On consent of and without objection from plaintiff, the Court entered as evidence defendants' exhibits A through C.

These exhibits are as follows: (A) Defendants' First Notice of Discovery and Inspection, dated May 23, 2023; (B) Plaintiff's Response to Defendants' Discovery Demand, dated July 19, 2023; and (C) several Official Payments by Workers' Compensation e-Check from defendant the Metro Group, Inc. to

plaintiff, issued monthly from January 21, 2019 to July 10, 2019, with plaintiff's Workers' Compensation Statement, dated in corresponding months, billing defendant the Metro Group, Inc. insurance premiums.<sup>1</sup>

Thereafter, defendants rested and presented their closing arguments. Defendants argued that plaintiff failed to meet their burden of establishing breach of contract because defendants never refused to pay but only disputed the amount due. In other words, defendants' sole position is that defendant did not breach the contract. As for plaintiff's cause of action for accounts stated, defendants argue only that defendant Metro Group, Inc. objected to the bills and statements and, therefore, is not liable for their full payment.

---

<sup>1</sup> (i) Official Payments by Workers' Compensation e-Check in the amount of \$38,099.50 from defendant the Metro Group, Inc. to plaintiff, dated January 21, 2019, with plaintiff's Workers' Compensation Statement, dated January 01, 2019, billing defendant the Metro Group, Inc., a total of \$189,401.11; (ii) Official Payments by Workers' Compensation e-Check in the amount of \$38,046.69 from defendant the Metro Group, Inc. to plaintiff, dated February 25, 2019, and plaintiff's Workers' Compensation Statement, dated January 01, 2019, billing defendant the Metro Group, Inc., a total of \$151,522.89; (iii) Official Payments by Workers' Compensation e-Check in the amount of \$37,993.86 from defendant the Metro Group, Inc. to plaintiff, dated March 21, 2019, with plaintiff's Workers' Compensation Statement, dated March 01, 2019, billing defendant the Metro Group, Inc., a total of \$113,644.66; (iv) Official Payments by Workers' Compensation e-Check in the amount of \$37,941.05 from defendant the Metro Group, Inc. to plaintiff, dated April 19, 2019, with plaintiff's Workers' Compensation Statement, dated April 01, 2019, billing defendant the Metro Group, Inc., a total of \$75,766.44; (v) Official Payments by Workers' Compensation e-Check in the amount of \$32,543.49 from defendant the Metro Group, Inc. to plaintiff, dated June 14, 2019, with plaintiff's Workers' Compensation Statement, dated June 01, 2019, billing defendant the Metro Group, Inc., a total of \$1,885,544.57; (vi) Official Payments by Workers' Compensation e-Check in the amount of \$32,543.49 from defendant the Metro Group, Inc. to plaintiff, dated July 10, 2019, with plaintiff's Workers' Compensation Statement, dated July 01, 2019, billing defendant the Metro Group, Inc., a total of \$521,709.70; and (vii) Official Payments by Workers' Compensation e-Check in the amount of \$32,543.49 from defendant the Metro Group, Inc. to plaintiff, dated July 10, 2019, with plaintiff's Workers' Compensation Statement, dated July 01, 2019, billing defendant the Metro Group, Inc., a total of \$521,709.70.

In conclusion, plaintiff submitted to the Court that a policy existed between the parties, that it fulfilled its part of the bargain, that defendants did not fulfill their part of the agreement, and that plaintiff is damaged in the amount of unpaid premiums. Plaintiff further highlighted that defendants -- while contending that defendants inflated the premiums as an apparent justification for not paying the policy premiums -- did not submit any proof to dispute plaintiff's calculations.

Regarding its claim for accounts stated, plaintiff maintained that defendant The Metro Group, Inc. received the invoices and partially paid them, leaving a balance due and owing of \$422,390.83, pending since July 01, 2019.

Now, upon the credible testimony, evidence admitted, law of the case, and applicable case law, the court makes the following findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. Plaintiff COMMISSIONERS OF THE STATE INSURANCE FUND administer the New York State Insurance Fund, which is a workers' compensation insurer in New York State.
2. It is undisputed that, at or around 1991, plaintiff issued a Workers' Compensation insurance policy that insured defendants The Metro Group, Inc. and Presidio Realty Holders (insureds).

3. It is further undisputed that plaintiff and insureds continued to renew that policy annually, until insured cancelled the policy on July 01, 2019.
4. The parties also do not dispute that the insurance contract between them provides in Part Four, as follows:

**"E. Premium Payments.**

"You [the Metro Group, Inc.] will pay all premium when due. You will pay the premium even if part or all of the Workers' Compensation Law is not valid. You are jointly and severally liable with all other insureds, for all premiums allocated for the period of time you are insured.

. . . .

**"F. Final Premium.**

"The premium shown on the Information Page, schedules and endorsements is an estimate. The final premium will be determined at the end of each policy period by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classification covered by this policy"

(plaintiff's exhibit 1, entered June 17, 2025 [emphasis added]).

5. It is further undisputed that part five of the parties' insurance contract provides:

**"B. Renewal.**

"This policy renews automatically and continues in full force after the expiration of the original period of insurance for succeeding period of twelve months or such other period as stipulation by endorsement. The policy may be terminated only under Paragraph D. Cancellation.

"You are liable for the premium for each succeeding policy period. Each renewal premium is payable by you at the beginning of each new period when you are notified of the amount"

(id.).

6. On or around January 03, 2020, New York State Insurance Fund conducted a premium audit of defendant The Metro Group, Inc.'s business for the period of July 01, 2018, to July 01, 2019.
7. New York State Insurance Fund provided defendant Metro Group, Inc. a copy of the exit interview form from that audit.
8. Plaintiff submitted as evidence -- on insureds' consent and without objection -- said form, the audit worksheets, and the related bills and Workers' Compensation Statements addressed to defendant Metro Group, Inc.
9. There is no dispute that plaintiff mailed, and insureds received notice of plaintiff's bills and Workers' Compensation Statements, indicating the premium amount due.
10. Indeed, insureds submitted proof of their monthly payments of said bills and Workers' Compensation Statements from

January 01, 2019, until July 01, 2019, when Metro Group Funding, Inc. undisputedly cancelled the policy.

11. According to said proof and the testimony of insureds only witness, beginning on June 01, 2019, defendant Metro Group, Inc., rendered only partial payment of the minimum amount due on the bill and Workers' Compensation Statement.
12. The bill and statement insureds proffered as evidence, dated June 01, 2019, demands a minimum payment due of \$413,065.35, and the bill and statement defendants proffered as evidence, dated July 01, 2019, demands a minimum amount of \$521,709.70.
13. Each of the above-mentioned bills and statements include handwritten annotations from Krista J. Pasfield, corporate secretary and director of operations for defendant the Metro Group, Inc., who attested to having reviewed them and to making the annotations.
14. Krista J. Pasfield testified that those notations authorized Metro Group, Inc. as to "Pay only the \$32K \$32,543.49 - KJP 6/10/19" and to "Pay \$32,543.49 only KP 7/9/19."
15. Krista J. Pasfield affirms that she authorized Metro Group, Inc.'s partial payment of the bills because she believed plaintiff's auditor used the wrong codes for employees, inflating premiums.

16. Insured's only witness further testified that she arbitrarily came up with the payment amount based on the premiums paid the previous year.
17. Metro Group, Inc. did not engage in any independent determination or verification that the specific codes that plaintiff's auditor used were improper in any way.
18. Further, no evidence presented at trial indicates that anyone from Metro Group, Inc., ever made an objection as to the accuracy of the amount, but that it simply paid less than the minimal amount, stopped payment and cancelled the policy.
19. Indeed, insureds, after a pre-trial conference, on record, consented to this Court issuing an order as follows:

"defendants are PRECLUDED from presenting evidence to dispute the classification of defendants' workers by plaintiff's auditor, as defendants confirmed, on record, that no dispute exists as to the accuracy of the subject classifications"

(New York State Courts Electronic Filing System [NYSEF] Doc.

No. 96, Order on Motions in Limine, date June 05, 2025

[emphasis in original]).

## CONCLUSIONS OF LAW

*Burden of Proof*

In a civil action, as here, plaintiff has the initial burden of proof of establishing the truth of its claim by a fair preponderance of the credible evidence (see Rinaldi & Sons, Inc. v Wells Fargo Alarm Service, Inc., 39 NY2d 191, 196 [1976] [holding that the plaintiff in an action for breach of contract and negligence "has the burden of proving his case by a fair preponderance of credible evidence"]; see also Torem v 564 Cent. Ave. Rest., Inc., 133 AD2d 25, 26 [1st Dept 1987] [finding a lower court inadequately charged a jury on the preponderance of evidence where said court failed to explain that preponderance of evidence does not mean the greater number of witnesses, but the greater part of evidence]; see also Pattern Jury Instructions 1:23)).

"The standard 'simply requires [that] the trier of fact . . . believe that the existence of a fact is more probable than its nonexistence before [the trier of fact] may find in favor of the party who has the burden to persuade the [trier of fact] of the fact's existence" (Cole v Cole, 35 NY3d 1012, 1020 [2020], quoting Concrete Pipe & Products of Cal., Inc. v Construction Laborers Pension Trust for Southern Cal., 508 US 602, 622 [1993]; see also Matter of Beautisha B. (Racquirine A.), 115

AD3d 854, 854 [2d Dept 2014] [applying the preponderance of evidence standard).

If, at the close of the proofs, the evidence as a matter of logical necessity is equally balanced, plaintiff has failed to meet his burden and the cause of action is not made out (Rinaldi, supra, 39 NY2d at 196).

*Breach of Contract Claim*

To prevail in a breach of contract claim, plaintiff must establish, by preponderance of evidence, that (1) a contract exists between the parties; that (2) plaintiff performed in accordance with the contract; that (3) defendants breached their contractual obligations; and that (4) defendants breach resulted in damages (see generally 34-06 73, LLC v Seneca Ins. Co., 39 NY3d 44, 52 [2022] [quotations and citations omitted] [discussing the standard for a breach of contract in the context of a pleading]). This standard further requires the plaintiff to demonstrate "the essential terms of the parties' purported contract, including the specific provisions of the contract upon which liability is predicated" (Hempel v Wise, 224 AD3d 574, 575 [1st Dept 2024], quoting Matter of Sud v Sud, 211 AD2d 423, 424 [1st Dept 1995]; see also Harman Becker Auto. Sys., Inc. v

Avnet, Inc., 2025 NY App Div LEXIS 2126, \* 4 [1st Dept 2025], 2025 NY Slip Op 02157, \*\* 4 [1st Dept 2025]).

Here, plaintiff has met its burden by a preponderance of the evidence. No dispute exists that the parties entered a contract entitled Workers' Compensation and Employers' Liability Policy, and that plaintiff performed its obligation thereunder, providing defendants with insurance. Further, plaintiff presented credible evidence that insureds breached the contract in failing to pay the premiums due in accordance with part four and part five of said contract, resulting in damages of unpaid premiums.

In rebuttal, insureds simply argue that they did not breach the policy agreement because they believe the amounts billed were wrongfully calculated. This argument presents a purported defense to the breach -- a reason for not paying the amount due as bargained -- not evidence that no breach occurred. However, defendants do not ask this court to excuse their duty to perform under the contract or allege any ground upon which such right should be excused.

There was no evidence at trial that plaintiff's audit was improperly performed, that the audit worksheets contained errors, or that any of plaintiff's admissible proof is inaccurate, including the premium amount due. To the extent that insureds attempted to reduce the premium amount, it was

immediately after the audit and concerned only subcontractors, which was resolved. In sum, insureds' speculation and disagreement alone presents no counterweight to plaintiff's credible evidence and admissions establishing, by a preponderance of evidence, that they breached the subject insurance contract.

*Account Stated*

"[A]n account stated claim is an independent cause of action that is not duplicative of a claim for breach of contract" (Aronson Mayefsky & Sloan, LLP v. Praeger, 228 AD3d 182, 183 [1st Dept 2024]). This claim is defined as an "account balanced and rendered, with an assent to the balance express or implied; so that the demand is essentially the same as if a promissory note had been given for the balance" (id., at 184-185). Such assent may be "implied where a defendant retains bills without objecting to them within a reasonable period of time, or makes partial payment on the account" (Stardom Brands, LLC v S.K.I. Wholesale Beer Corp., 172 AD3d 1266, 1268 [2d Dept 2019]).

Here, again, plaintiff established this cause of action by a preponderance of the evidence but only against insured the Metro Group, Inc. There is no dispute that Metro Group, Inc.,

received the subject invoices and made partial payments on them, including the invoice, dated July 01, 2019, which sought payment of \$529,709.70. Indeed, as part of its rebuttal, insureds admitted through their sole witness that the Metro Group, Inc. received its bills, including the bill and Workers' Compensation Statement, dated July 01, 2019. Through the same witness and through insureds' exhibits of proof of payments, insureds also admitted that Metro Group, Inc. issued partial payment of that bill in the amount of \$32,543.49.

Further, nothing in the record indicates that Metro Group, Inc. objected to the amounts due. While Metro Group, Inc. claims that it did not agree to the statement amount, the notation on its records of partial payment, without more, are insufficient to establish notice to plaintiff of any objection relating to the accounting. There are other viable reasons why a debtor may pay only part of an amount due, and it cannot fairly be left to plaintiff to determine whether lack of payment was due to the availability of funds or objection to the billing amount or any other reason.

Further, as plaintiff commenced this action at or around two years after receipt of the bill, dated July 01, 2019, it cannot be said that Metro Group, Inc., made a reasonably timed objection. Finally, and notably, even at trial, insureds presented no proof that plaintiff's audit, auditing worksheets

and related bills were inaccurate. Their speculation and disagreement is simply not enough and provides no counterweight to plaintiff's evidence and Metro Group, Inc.'s admissions.

However, plaintiff did not establish, by a preponderance of evidence, an account stated against insured Presidio Realty Holders, Inc. There was no proof that it mailed any statements or bills for payment to this entity and no admissions in this regard. Further, there was no evidence that notice on them should be implied because of a relationship to Metro Inc., Group, if any.

Accordingly, it is

ORDERED that defendants THE METRO GROUP, CORP. and PRESIDIO REALTY HOLDERS, INC. are liable to plaintiff COMMISSIONERS OF THE STATE INSURANCE FUND for breach of its contract with plaintiff; it is further

ORDERED that plaintiff COMMISSIONERS OF THE STATE INSURANCE FUND shall have a judgment on its breach of contract claim against defendants THE METRO GROUP, CORP., and PRESIDIO REALTY HOLDERS, INC., who is jointly and severely liable with defendant THE METRO GROUP, CORP., in the amount of \$422,390.83, with 9% interest from July 01, 2019; it is further

ORDERED that defendant THE METRO GROUP, CORP. is liable to plaintiff COMMISSIONERS OF THE STATE INSURANCE FUND on its account stated claim; it is further

ORDERED that plaintiff COMMISSIONERS OF THE STATE INSURANCE FUND shall have a judgment on its account stated claim against defendant THE METRO GROUP, CORP. in the amount of \$422,390.83, with 9% interest from July 01, 2019; it is further

ORDERED that the Clerk of Court shall mark the file accordingly.

THIS CONSTITUTES THE DECISION AND ORDER OF THE COURT.

7/28/2025  
DATE

*Emily Morales-Minerva*  
EMILY MORALES-MINERVA, J.S.C.

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION

APPLICATION:  GRANTED  GRANTED IN PART  OTHER

CHECK IF APPROPRIATE:  SETTLE ORDER  SUBMIT ORDER  REFERENCE

INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT