

**Liberty Mut. Ins. Co. v Rojas**

2025 NY Slip Op 32976(U)

July 30, 2025

Supreme Court, New York County

Docket Number: Index No. 653824/2023

Judge: Lyle E. Frank

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. LYLE E. FRANK PART 11M

Justice

-----X

LIBERTY MUTUAL INSURANCE COMPANY, LM
GENERAL INSURANCE COMPANY,

Plaintiff,

INDEX NO. 653824/2023

MOTION DATE 05/20/2025

MOTION SEQ. NO. 002

- v -

RICARDO ROJAS, ALL CITY FAMILY HEALTHCARE
CENTER INC, ANJANI SINHA MEDICAL PC,APPLE
CHIROPRACTIC OF NY PC,ARGYLE PHARMACY INC,
AUTUMN PT PC,BITACHON DIAGNOSTICS INC, BLISS
ACUPUNCTURE PC,COMMUNITY MEDICAL IMAGING
PC,COMPLETE ORTHO SUPPLY INC, COMPREHENSIVE
DIAGNOSTICS AND IMAGING PC,CONCIERGE
DIAGNOSTICS INC, DANADA INTERNAL MEDICINE
PC,EAST COAST MED GROUP INC, FAIRFIELD
PHARMACY INC, FALLA POLYCARPE, FIRST SUPPLY
INC, GRACE MEDICAL HEALTH PROVIDER PC,HBD RX
INC, HONG PAK MD PC,INTERVENTIONAL PHYSICAL
MEDICINE AND REHAB OF NEW YORK PLLC,JISU
PHYSICAL THERAPY PC,JORDAN FERSEL MD
PC,KWANG HEE LEE, MAGNUS PHYSICAL THERAPY
PC,MARK H VINE MD, METROPOLITAN MEDICAL &
SURGICAL PC,MG CHIROPRACTIC PC,MIDDLE VILLAGE
DIAGNOSTIC IMAGING PC,MW PSYCHOLOGY PC,NEW
ARENA PT PC,PAL MEDICAL SUPPLIES INC, PARK
AVENUE MEDICAL IMAGING PC,PLEX HEALTH INC,
PROMPT RECOVERY MED INC, PSYCHOLOGY AFTER
ACCIDENT PC,Q PHARMACY RX INC, QUEENS
PROFESSIONAL CHIROPRACTIC CARE PC,READY RX
LLC,RIGHT CHOICE SUPPLY INC, SASHA ARISTIDE,
SEDATION VACATION PERIOPERATIVE MEDICINE
PLL, SINAI DIAGNOSTICS LLC,SP ONE SERVICES INC,
SUSAN J POLINO PHD, TRI-BOROUGH NY MEDICAL
PRACTICE PC,TRUE HAND CHIROPRACTIC &
ACUPUNCTURE PC,UNISOFT LLC,ZENITH MEDICAL
SUPPLY CORP

DECISION + ORDER ON
MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 36, 37, 38, 39, 40,
41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

were read on this motion to/for JUDGMENT - SUMMARY.

This action arises out of claims for No-Fault reimbursement stemming from a motor vehicle accident involving individual defendant Ricardo Rojas on November 27, 2021. Plaintiff now seeks summary judgment against the answering defendants, All City Family Healthcare Center Inc., Park Avenue Medical Imaging PC, Sasha Aristide, Tri-Borough NY Medical Practice PC, Anjani Sinha Medical PC, Plex Health Inc, Ready RX LLC, Zenith Medical Supply Corp., Autumn PT PC and Jordan Fersel, MD, PC. Defendants, All City Family Healthcare Center Inc., Park Avenue Medical Imaging PC, Sasha Aristide, and Tri-Borough NY Medical Practice PC, oppose the instant motion. For the reasons set forth below, the motion for summary judgment is granted<sup>1</sup>.

### **Background**

Defendant Rojas was involved in a motor vehicle accident, while driving a vehicle insured by plaintiff. Following the accident, defendant Rojas began seeking medical treatment and the medical providers subsequently submitted bills to plaintiff seeking No-Fault reimbursement. Defendant Rojas did not submit an application for No-Fault benefits (“NF-2”).

Pursuant to the claims submitted, the plaintiff required defendant Rojas to appear for an Examination Under Oath (“EUO”). Defendant Rojas appeared at the EUO, however failed to respond to subsequent requests for information, as required by the policy.

### **Standard of Review**

Under CPLR § 3212, a party may move for summary judgment and the motion “shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party.” CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to

---

<sup>1</sup> The Court would like to thank Alexa Berrin for her assistance in this matter.

judgment as a matter of law, the burden then shifts to the opponent to “produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action.” *Stonehill Capital Mgt. LLC v Bank of the W.*, 28 NY3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

### **Discussion**

Although in its counterstatement of facts defendants contend that an NF2 was in fact sent by the individual defendant, they do not provide that NF2, nor do they articulate a basis for that assertion.

In support of its motion plaintiff submits the affirmation of Jennifer Petito, claims department manager, confirming that defendant Rojas did not submit an NF-2. Plaintiff also contends that the timeline to pay or deny a claim is tolled until the insurer has received proper “verification of all relevant information requested.” *St. Vincent Hospital of Richmond v American Tr. Ins. Co.*, 299 AD2d 338 [2d Dept 2002].

In opposition to the motion defendant relies on *Burke Physical Therapy, P.C. v State Farm Mut. Auto. Ins. Co.*, 83 Misc 3d 41, 42 [App Term 2024], where the Appellate Term held that post-EUO verification demands constitute independent verification requests and therefore must separately comply with the timeframes set forth in 11 NYCRR § 65-3.5(b). This Court however does not agree with the Appellate Term’s interpretation of the statute.

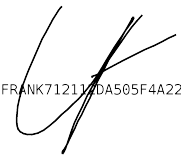
11 NYCRR § 65-3.5(a) specifically provides that that an NF-2, or “substantially equivalent written notice” must be provided to the insurer and upon its receipt may make it verification requests. The statute does not list an NF-3 as substantially equivalent written notice, anywhere in the statute, nor can a plain reading of the provision be read to include that form as

equivalent to an NF-2. The NF-3 is submitted by medical providers, not by the insured, thus this Court cannot deem it to be sufficient to commence the timeframe the insurer has to request verification from the insured. Contrary to the Appellate Term’s decision this Court does not find that the NF-3 form is a prescribed verification form pursuant to 11 NYCRR § 65-3.5(a) and (b), had the legislature intended to include the NF-3 form as, it would have done so. Accordingly, this Court finds that plaintiff’s additionally verification requests are timely, and the individual defendant has failed to comply with its obligations. Accordingly, it is hereby

ORDERED ADJUDGED and DECLARED that plaintiff’s motion for summary judgment is granted; and it is further

ORDERED ADJUDGED and DECLARED that plaintiff owes no duty to defendants All City Family Healthcare Center Inc., Park Avenue Medical Imaging PC, Sasha Aristide, Tri-Borough NY Medical Practice PC, Anjani Sinha Medical PC, Plex Health Inc, Ready RX LLC, Zenith Medical Supply Corp., Autumn PT PC and Jordan Fersel, MD, PC. to pay No-Fault claims to with respect to November 27, 2021, accident involving Ricardo Rojas; and it is further

ORDERED ADJUDGED and DECLARED that all No-Fault lawsuits and arbitrations arising from No-Fault claims submitted to Plaintiff in connection with the subject November 27, 2021, accident are permanently stayed.

  
20250730115801LFRANK712117DA505F4A22B8C0BBCC4BE04C01  
\_\_\_\_\_  
**LYLE E. FRANK, J.S.C.**

7/30/2025  
DATE

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE