

Safeco Ins. Co. v Gambrell

2025 NY Slip Op 33142(U)

August 25, 2025

Supreme Court, New York County

Docket Number: Index No. 651629/2022

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02M

Justice

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SAFECO INSURANCE COMPANY, AMERICAN STATES
INSURANCE COMPANY,

Plaintiff,

INDEX NO. 651629/2022

MOTION DATE 08/26/2024

MOTION SEQ. NO. 002

- v -

BRENDEN GAMBRELL, SHANAYIA GILMORE, 334
GRAND CONCOURSE MEDICAL, AAG PHYSICAL
THERAPY PC,ADVANTAGE RADIOLOGY PC,AGASAKY
MULTI SERVICES INC, AKE SERVICES INC, ALBANY
CHIROPRACTIC AND PHYSICAL THERAPY PLLC,AV
ACPUNCTURE PC,AZTEC MEDICAL PA, BRONX
CHEMISTS RX INC, BRUCE JACOBSON DC,
COMMUNITY MEDICAL CARE OF NY PC,ERROL C
MALLETT MEDICAL PC,FAMILY HEALTH NP PC,GEPP
PSYCHOLOGICAL SERVICES PLLC,GLOBAL MEDICAL
GROUP USA CORP, HUDSON REGIONAL HOSPITAL,
IDEAL CARE PHARMACY INC, INTEGRATED SPECIALTY
ASC LLC,JONATHAN BILE PA, LIFELINE MEDICAL
IMAGING PC,MACINTOSH MEDICAL PC,METRO PAIN
SPECIALISTS PROFESSIONAL CORPORATION, MKTM
PHYSICAL THERAPY PC,NEW SENSE ACUPUNCTURE
PC,PROMPT DIRECT SUPPLY CORP, PROMPT
RECOVERY MED INC, RIDGEWOOD DIAGNOSTIC
LABORATORY LLC,SOUTH SHORE CHIROPRACTIC
WELLNESS PC,STAR OF NY CHIROPRACTIC
DIAGNOSTIC PC,TMVQS CORP DBA TRINITY
PHARMACY, TREE OF LIFE RX INC, TRI-BOROUGH NY
MEDICAL PRACTICE PC,WELLNESS MEDICAL IMAGING
PC,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 88, 90, 91, 92, 93, 94, 95, 96

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

This declaratory judgment action arises out of a motor vehicle accident that purportedly occurred on May 14, 2021, involving individual defendants Brenden Gambrell and Shanayia Gilmore (“Claimants”) in a vehicle insured by plaintiffs Safeco Insurance Company and American

States Insurance Company (“Plaintiffs”). Claimants allege that they were injured in a collision at the intersection of East 86 Street and Farragut Road in Brooklyn, NY, involving the car operated by insured Gilmore and containing Gambrell as a passenger, and a vehicle operated by non-party Xiangdeng He. Claimants allege Xiangdeng He ran the stop sign and struck their vehicle, while Xiangdeng He alleges that Gilmore turned and deliberately struck his vehicle (NYSCEF Doc. No. 60). Following the collision, Claimants sought treatment from the other defendants (“Medical Provider Defendants”), which then submitted bills to Plaintiffs seeking reimbursement under the vehicle’s No-Fault policy. Gilmore appeared at her Examination Under Oath (“EUO”), while Gambrell failed to do so. Plaintiffs maintain that although Gilmore appeared at her EUO, she failed to comply with the post-EUO requests, including producing proof of her residency at the policy address and cell phone statements with transactions (NYSCEF Doc. No. 83). As a result, Plaintiffs denied the bills submitted by the Medical Provider Defendants as to both Claimants.

Plaintiffs thereafter commenced this action seeking a declaratory judgment that they properly denied the claims and had no obligation to reimburse the Medical Provider Defendants under the applicable No-Fault policy. Default judgment was entered against Gilmore and certain Medical Provider Defendants on July 20, 2023 (NYSCEF Doc. No. 50). Plaintiffs now move for summary judgment against Gambrell and the remaining Medical Provider Defendants.

Medical Provider Defendants 334 Grand Concourse Medical, Community Medical Care of NY PC, Gepp Psychological Services PLLC, Integrated Specialty Asc LLC, Jonathan Bile PA, Lifeline Medical Imaging PC, Metro Pain Specialists Professional Corporation, and Ridgewood Diagnostic Laboratory LLC oppose this motion. Star of NY Chiropractic Diagnostic PC, Tri-Borough NY Medical Practice PC and Gambrell failed to file an opposition.

Additionally, the proceedings have been discontinued by stipulations as to Advantage Radiology PC, Agasaky Multi Services Inc, Av Acupuncture PC, Bronx Chemists Rx Inc, Ideal Care Pharmacy Inc, Macintosh Medical PC, Prompt Direct Supply Corp, TMVQS Corp DBA Trinity Pharmacy, and Tree Of Life Rx Inc.

On a motion for summary judgment, a movant must make a prima facie showing that they are entitled to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any issue of material fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). After the movant makes this showing, “the burden shifts to the party opposing the motion . . . to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact such that trial of the action is required” (*id.*).

11 NYCRR § 65-1.1 requires that full compliance by an eligible injured person with the terms of coverage in a No-Fault policy is a condition precedent to all claims against an insurance company under the relevant policy. A claimant-defendant’s failure to submit to an EUO constitutes a breach of a condition precedent to coverage under a No-Fault policy and vitiates the policy (*Hertz Corp. v Active Care Med. Supply Corp.*, 124 AD3d 411 [1st Dept 2015]). However, an insurer must establish that it requested EUOs in accordance with the procedures and time frames in the No-Fault regulations (11 NYCRR § 65-3.5) in order to deny a claim where a claimant-defendant fails to appear for an EUO (*Unitrin*, 82 AD3d at 560; *American Tr. Ins. Co. v Longevity Med. Supply, Inc.*, 131 AD3d 841, 841-42 [1st Dept 2019]). In particular, the insurer must generate the first EUO scheduling letter within 15 business days of receipt of the first provider’s bill, and the second EUO scheduling letter must be generated less than 10 calendar days after the first nonappearance, as required pursuant to 11 NYCRR 65-3.6 (b) (*Hertz Vehs. LLC v Significant Care, PT, P.C.*, 157 AD3d 600, 601 [1st Dept 2018]). As for post-EUO document requests, the

insurer is also bound by 11 NYCRR 65-3.5(b) and must make the request within 15 business days of the EUO.

Here, Plaintiffs furnish insufficient evidence to meet its prima facie burden of demonstrating that Gambrell’s EUO was properly and timely noticed. The submitted documents show that Plaintiffs received the providers’ first medical bills in June 2021 (NYSCEF Doc. No. 62 at 14-17, 18-22, 23-26, 27-30, 31). The first EUO scheduling letter was sent to Gambrell on September 30, 2021 (NYSCEF Doc. No. 76 at 1-4), more than two months after the first provider filed its bills, making the EUO untimely. The subsequent two scheduling letters were also untimely, as they were sent more than 10 days after Gambrell’s nonappearance at each EUO date (NYSCEF Doc. No. 76 at 10-18, 19-26). Accordingly, the Court must deny Plaintiffs’ summary judgment motion as to Gambrell and his Medical Provider Defendants.

Furthermore, Plaintiffs failed to demonstrate that their post-EUO demands for documents from Gilmore were timely, as her EUO took place on July 9, 2021 and August 2, 2021 (NYSCEF Doc. No. 82), and the post-EUO demands were sent on September 14, 2021, 30 business days after the EUO ended. This precludes the Court from granting Plaintiffs’ motion as to claims submitted by Medical Provider Defendants arising out of Gilmore’s purported treatment.

Accordingly, it is hereby:

ORDERED that Plaintiffs’ motion for summary judgment is denied.

This constitutes the Decision and Order of the Court.

8/25/2025
DATE

LORI S. SATTLER, J.S.C.

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