

**Hereford Ins. Co. v Orthopaedics, Spine & Sports  
Medicine LLP**

2025 NY Slip Op 33911(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 156521/2022

Judge: David B. Cohen

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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. DAVID B. COHEN PART 58**

*Justice*

-----X

HEREFORD INSURANCE COMPANY

Plaintiff,

- v -

ORTHOPAEDICS, SPINE & SPORTS MEDICINE LLP,

Defendant.

-----X

**INDEX NO.** 156521/2022

**MOTION DATE** 11/09/2023

**MOTION SEQ. NO.** 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 60

were read on this motion to/for DISMISS.

This action involves a trial de novo application in a no-fault insurance case and plaintiff’s application for a judgment declaring that plaintiff does not have to pay for certain claims asserted by defendant.

Plaintiff moves for an order dismissing defendant’s claims and granting plaintiff summary judgment against defendant for a declaration of no-coverage. Defendant cross-moves for dismissal on the ground that the court has no jurisdiction, and plaintiff’s claim cannot be maintained, based on the arbitration awards granted in defendant’s favor. Plaintiff opposes the cross-motion.

I. PERTINENT BACKGROUND

Initial arbitration award

On March 20, 2022, the arbitrator ruled as follows –

In dispute are [defendant’s] claims in the sum of \$23,961.93 for an evaluation and cervical discectomy performed on [its] assignor, R.AA., said claims arising from an automobile accident on December 11, 2019. [Plaintiff] has denied these claims alleging that the motor vehicle accident was not a covered event and that any alleged injuries and treatment were not casually related to the covered motor vehicle accident.

...

As an initial matter, I note that [plaintiff] filed a declaratory judgement action entitled Hereford Insurance Company. v. Unicorn Acupuncture PC., et. al., Index No. 154911/2021 in Supreme Court, New York County, in which [defendant] is a named defendant. The Summons and Complaint is dated May 18, 2021 and seeks a declaration that Hereford owes no duty to pay No-Fault claims arising from the August 25, 2020 collision referenced in the complaint. Notably, there is no proof that [defendant] was served with the summons and complaint. In any event, absent any request or order to stay the instant arbitration, there is no reason to delay the within arbitration proceedings pending the court action.

...

In seeking to establish that the within occurrence was not a covered accident [plaintiff] relies solely on the EUO testimony of the Claimant, who was a passenger in the vehicle, Claimant's uncle, who was the driver of the vehicle, and two other passengers in the vehicle. [Plaintiff's] submission did not contain any brief or outline setting forth the nature of the testimony which allegedly led to its denial, merely stating that the denial was "based on material misrepresentation and the lack of knowledge and/or details to support proof of claim regarding the nature and extent of the injuries as well as the facts details of the loss".

...

Upon careful review of the evidence presented I find that [plaintiff's] proof falls far short of establishing that the instant occurrence did not arise out of an insured event. Any inconsistencies in the EUO testimony of the driver and occupants are minor, do not relate to the actual accident and do not establish that the accident was not a covered event.

The arbitrator thus ruled in favor of defendant, although reducing the amount sought from \$23,000 to \$14,000.

#### Master Arbitration Award

After appealing the lower arbitrator's award, the master arbitrator, on July 8, 2022, affirmed the award in its entirety.

Other pending action

In the underlying declaratory judgment under index number 154911/2021, a default judgment was granted against defendant, and a declaratory judgment was issued of no coverage for the accident and related claims, including those at issue here. That determination was made after the arbitrators' awards at issue in this action.

II. ANALYSIS

A party to a no-fault arbitration may seek de novo review of a master arbitrator's award if it exceeds \$5,000 (Ins Law 5106(c)). A de novo adjudication pursuant to Insurance Law § 5106(c) is "something very different from judicial review of some other entity's determination" (*Matter of Greenberg [Ryder Truck Rental, Inc.]*, 70 N.Y.2d 573, 577, 523 N.Y.S.2d 67, 517 N.E.2d 879 [1987]). De novo adjudication of the liability issue is not barred, under an estoppel-like theory, by the prior determinations of the arbitrator (*id.*).

First, plaintiff argues that the declaratory judgment decision bars any claims by defendant, while defendant contends that the arbitration awards are binding.

Relevant caselaw provides that a declaratory judgment decision rendered on default has no preclusive effect here (*see Rojas v Romanoff*, 186 AD3d 103 [1st Dept 2020] [as judgment entered in declaratory judgment action was issued on default, there was no issue preclusion]). As cited in *Rojas*, "[b]ecause the judgment taken against [plaintiff here] was entered on default, the issue of liability [including whether plaintiff's injuries were causally related to a motor vehicle accident involving defendant driver] was not actually litigated in the [declaratory judgment] action and [any] finding of liability therefore has no collateral estoppel effect" (186 AD3d at 109, quoting *Pigliavento v Tyler Equip. Corp.*, 233 AD2d 810 [3d Dept 1996]; *see also Am. Transit Ins. Co. v Hossain*, 100 AD3d 421 [1st Dept 2012] [default judgment issued in State

Farm's favor in another court did not have collateral effect precluding determination in framed-issue hearing as to whether State Farm was obligated to insure respondent in connection with certain claims]).

Indeed, default declaratory judgment decisions are disfavored when they are issued after related arbitration awards. In *Hereford Ins. Co. v Iconic Wellness Surgical Servs., LLC*, the Court held that:

Civil Court erred in vacating the master arbitrator's no-fault award on the ground that it is contrary to a subsequent order rendered by the Supreme Court, New York County, which declared that petitioner-insurer is not liable for no-fault benefits arising from the underlying automobile accident. While the preclusive effect of a pre-arbitration judicial decision may be sufficient to vacate an arbitral award, a post-arbitration judicial determination concerning the insurer's liability is not one of the limited grounds for vacating an arbitration award. Indeed, if a motion to vacate an arbitration award on this ground could be entertained, 'the arbitration award would be the beginning rather than the end of the controversy, and the protracted litigation which arbitration is meant to avoid would be invited.'"

(63 Misc 3d 154[A] [App Term, 1st Dept 2019] [citations omitted]).

Thus, there is no merit to plaintiff's argument for dismissal of defendant's no-fault claims on the basis of collateral estoppel.

As to defendant's argument, as plaintiff is entitled to a trial de novo pursuant to Insurance Law 5106(c), defendant is also not entitled to dismissal of the complaint based on the collateral estoppel effect of the arbitration awards.

As to the merits of the action and this court's consideration of the evidence presented on the trial de novo, plaintiff first asserts that a claimant's failure to return a transcript of an examination under oath (EUO) voids coverage as a matter of law. However, it does not submit proof that it mailed the transcript to the claimant, and thus fails to prove, prima facie, that it mailed the transcript and the claimant failed to return it timely (*cf Hertz Vehicles, LLC v Best Touch PT, P.C.*, 162 AD3d 617 [1st Dept 2018] [motion should not have been denied as insurer

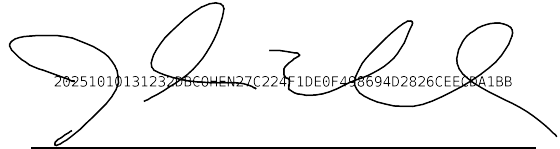
submitted two letters showing that EUO transcript was sent to claimant for signature, and it was not returned]; *see also AT Med. P.C. v Utica Mut. Ins. Co.*, 11 Misc 3d 142[A] [App Term, 2d and 11<sup>th</sup> Jud Dists 2006] [defendant failed to provide proof that it mailed transcript to claimant for signature]; *Am. Tr. Ins. Co. v 21<sup>st</sup> Century Pharmacy Inc.*, 67 Misc3d 1213[A] [Sup Ct, New York County 2020] [insurer did not meet burden of showing that it provided claimant with transcript]).

As to whether the claimant's injuries were causally related to the accident, the EUO transcripts reflect minor discrepancies among the deponents, unrelated to the accident, and are thus insufficient for plaintiff to establish that the claims should be denied based on fraud (*see e.g., Easy Care Acupuncture, PC v Hartford Ins. Co.*, 57 Misc 3d 147[A] [App Term, 1st Dept 2017] [proof insufficient to demonstrate as matter of law that injuries did not arise out of insured incident; "the affidavit of defendant's investigator, who relied upon certain inconsistencies among the statements of the vehicle's three occupants regarding events of the day of the collision, rather than the events of the collision itself, and other 'red flags' common in staged accident cases" insufficient to meet insurer's prima facie burden]; *Amstel Chiro. P.C. et al. v Omni Indem. Co.*, 2 Misc 3d 129[A] [App Term, 2d and 11<sup>th</sup> Jud Dists 2004] [defendant did not prove fraud defense as affidavit consisted of unsubstantiated hypotheses and supposition]).

Accordingly, it is hereby

ORDERED that plaintiff's motion is denied in its entirety; it is further

ORDERED that defendant’s cross-motion is granted to the extent of dismissing the complaint on the merits after trial de novo, and the clerk is directed to enter judgment accordingly.



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10/10/2025  
DATE

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DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT