

**Active Care Med. Supply, Corp. v United Servs. Auto.
Assn.**

2025 NY Slip Op 34480(U)

November 19, 2025

Civil Court of the City of New York, Kings County

Docket Number: Index No. CV-729138-19/KI

Judge: Odessa Kennedy

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This opinion is uncorrected and not selected for official publication.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS PART NFA 40

ACTIVE CARE MEDICAL SUPPLY, CORP.,
A/A/O DOOLITTLE, TONY,

Plaintiff,

-against-

UNITED SERVICES AUTOMOBILE
ASSOCIATION,

Defendant.

Index No.: CV-729138-19/KI
Motion Cal. REG # 3 & NFA # 3 & 4
Motion Seq. 1, 2, 3

DECISION AND ORDER

Recitation as required by CPLR § 2219(a) of the papers considered in review of this Motion:

Papers:

P’s Motion for Summary Judgment.....	<u>1-2</u>
D’s Cross-Motion for Summary Judgment	<u>3-4</u>
Plaintiff’s Cross-Motion	<u>5-6</u>
P’s Opposition.....	<u>7</u>
D’s Reply.....	<u>8</u>

The Court has considered the parties’ submissions, the procedural history of this matter, and, most significantly, the documentary record submitted by Defendant in support of its assertion that it timely filed its Summary Judgment Motion dated September 27, 2021, and allegedly filed on September 28, 2021.

Defendant insists that it filed a Notice of Motion returnable on November 5, 2021, and dated September 27, 2021, by transmitting it through the Electronic Document Delivery System (“EDDS”) on or about September 28, 2021. In support of this contention. Defendant annexed as Exhibit G (NYSCEF Doc. No. 10) to its 2023 Cross-Motion (NYSCEF Doc. No. 2) an “EDDS Notification of Receipt” from the Kings County Civil Court. The Notification of Receipt, however, tells a very different story from the one Defendant asks this Court to believe.

On page one (1) of the Notification of Receipt, the Clerk announces in unmistakable terms: “This is an automated message, please do not reply. For questions about this submission, *please refer to the Receiver Contact Information below.*” (Emphasis added). And on page two (2) — in bold red text — the Clerk states: “Note – this email address *is for correspondence only – No documents will be accepted through this email address.*” (Emphasis added). Followed up in bold and italicization in the original, by: “NOTE: The *sending* and/or receipt of any documents *through the courts Electronic Document Delivery System (EDDS) does not constitute service upon any other party, nor does it constitute filing of those documents with the court or County Clerk.*” (Emphasis added).

No reasonable litigant could read these statements and come away with the confidence Defendant professes here that its September 27, 2021 Motion had been filed. The Notification of

Receipt, at most, confirms the transmission of documents into a digital mailbox explicitly designated as *non-filing* and *only for correspondence* — a holding area, not a docket. What it does *not* confirm is *acceptance, review, filing, or docketing by the Clerk of the Court*. It is therefore incumbent upon the submitting party — here, the Defendant — to demonstrate that a filing actually occurred. This requires evidence that the Clerk of the Court accepted the submission for filing, or that Defendant, after receiving the explicit EDDS warning, contacted the Clerk of the Court to ensure proper receipt and filing. Defendant did neither. No follow-up email. No inquiry. No Clerk's affidavit. No print-out of a filing confirmation. No NYSCEF timestamp. *Nothing*. Thus, despite the care with which Defendant invokes the date "September 27, 2021," the record reveals no proof — none — that the September 27, 2021, Motion was filed on that date or the next.

The Court is left instead with a Notification of Receipt whose plain text states that documents submitted in this fashion *are not deemed filed*, and with a Court Record notably devoid of any actual filing by the Defendant.

The timing of the filing matters. Plaintiff's Certificate of Readiness was filed August 31, 2021. A Motion for summary judgment *filed after the filing of a Note of Issue or a Certificate of Readiness* is subject to stringent timeliness requirements. Without proof of filing in September 2021, the next operative motion date is January 17, 2023 — a date appearing in Defendant's *later* Cross-Motion submissions— rendering Defendant's Cross-Motion facially untimely. Because Defendant neither confirmed the filing of the September 27, 2021 Motion with the Clerk of the Court nor submitted competent evidence that the Clerk of the Court accepted the document notwithstanding the EDDS disclaimer, the Court must accept the documentary record as it exists, rather than as Defendant wishes it to be. The Court therefore concludes that the September 27/28, 2021, Motion was *never filed* based on the evidence submitted. If defendant believes he can obtain competent admissible evidence to show that the motion was in fact filed on September 27/28, 2021, and that the Clerk's rejection of the motion was subsequently accepted, he may refile the motion and include competent clear evidence that does not require the Judge to interpret vague clerical entries without clerical guidance.

Furthermore, if the September 27/28, 2021, motion was accepted by the clerk, despite lack of evidence, it would make no sense that the motion 2021 motion would never appear before the Court, but defendant's instant motion filed in 2023 was calendared and appeared before the Court.

Accordingly, it is hereby:

ORDERED, that Defendant's Motion is DENIED as to the relief requested, without prejudice.

ORDERED, that Plaintiff's Motion is GRANTED TO THE EXTENT THAT Plaintiff has established that it submitted its bills to Defendant, and that Defendant did not pay or deny the bills as required by the No-Fault Regulation, and,

ORDERED, that this matter shall proceed to trial.

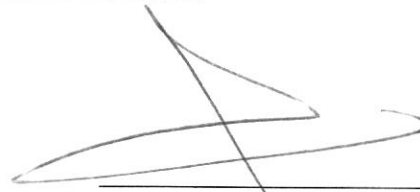
This constitutes the Decision and Order of the Court.

Counsel for Plaintiff – Printed Name and Initials: The Rybak Firm PLLC

Counsel for Defendant – Printed Name and Initials: Marshall Dennehy

Date: November 19, 2025
Brooklyn, New York

ENETERED - Kings Civil Court
12/1/2025, 10:53:13 AM



Honorable Odessa Kennedy
Judge, Civil Court, Kings County

Odessa Kennedy
Judge, Civil Court