

Allstate Ins. Co. v Art of Healing Medicine, P.C.

2026 NY Slip Op 30110(U)

January 5, 2026

Supreme Court, New York County

Docket Number: Index No. 158386/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH PART 14

Justice

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ALLSTATE INSURANCE COMPANY, ALLSTATE FIRE
AND CASUALTY INSURANCE COMPANY, ALLSTATE
PROPERTY AND CASUALTY COMPANY, ALLSTATE
INDEMNITY COMPANY

INDEX NO. 158386/2020

MOTION DATE N/A, N/A¹

MOTION SEQ. NO. 001 002

Plaintiffs,

- v -

**DECISION + ORDER ON
MOTION**

ART OF HEALING MEDICINE, P.C.,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

were read on this motion to/for STAY.

Motion Sequence Numbers 001 and 002 are consolidated for disposition. Plaintiffs' motion (MS001) to dismiss the counterclaims is granted and plaintiffs' motion for a stay of all proceedings, including arbitrations, brought by defendant against plaintiffs identified in the motion is denied (MS002).

¹ The elephant in the room must be acknowledged. This case was transferred to the undersigned in December 2025 and, after reviewing this docket, the undersigned apologizes for the extreme delay in the issuance of this decision. These motions have been pending for years and years; it seems they were either lost or forgotten by the prior judge. There is a notation for an oral argument appearance in November 2022 for MS002 and no indication what happened after that. In any event, the delay should never have happened.

Background

Plaintiffs bring this case for declaratory relief against defendant relating to numerous no-fault claims submitted by defendant to plaintiffs. They insist that after an investigation, they requested verification that defendant was eligible to receive no-fault benefits through Examinations Under Oath (“EUO”s) and defendant refused to cooperate with plaintiffs’ requests for information.

MS001

In motion sequence 001, plaintiffs seek to dismiss defendant’s counterclaims. The first counterclaim seeks damages based on plaintiff’s purported bad faith in bringing this case while the second counterclaim demands that plaintiffs provide defense and indemnification to defendant in connection with this case. The third claim alleges a violation of General Business Law § 349 while the final counterclaim alleges abuse of process. Plaintiffs contend that all of these counterclaims are without merit.

In opposition, defendant argues that plaintiffs engaged in bad faith insurance practice by wrongfully denying claims that it submitted to plaintiffs. It maintains that plaintiffs engage in questionable claims practices and that there should be discovery on these counterclaims.

First Counterclaim

In this counterclaim, defendant alleges that plaintiffs engaged in bad faith conduct by bringing this action and so it seeks legal fees and other fees in an amount not less than \$100,000 (NYSCEF Doc. No. 3 at 19 of 26).

The Court dismisses this counterclaim. “There is no separate tort for bad faith refusal to comply with an insurance contract. While an insurer may be held liable for damages to its insured for the bad faith refusal of a settlement offer, the [movant] here failed to state such a

cause of action” (*Schlusberg v New York Cent. Mut. Fire Ins. Co.*, 206 AD3d 682, 683 [2d Dept 2022] [internal quotations and citations omitted]). Defendant did not cite a sufficient basis for the proposition that there is a stand-alone claim for “bad faith” where a no-fault insurer seeks declaratory relief to deny coverage to a medical provider (*see Orient Overseas Assoc. v XI Ins. Am., Inc.*, 132 AD3d 574, 576, 18 NYS3d 381 [1st Dept 2015] [finding that an insurer’s bad faith claim selling practices were dismissed as duplicative of a breach of contract claim]).

Even if there were some type of cognizable bad faith claim, the answer did not allege enough facts to substantiate a bad faith claim. That defendant will incur expenses, including legal fees, in this litigation is not evidence of bad faith. Plaintiff is entitled to bring a case for declaratory relief based on the allegations in its complaint—that defendant disagrees does not properly allege bad faith.

Second Counterclaim

Similarly, the Court dismisses the second counterclaim which seeks to recover legal fees incurred in defending this action. Defendant did not cite to any provision in a contract or statute that would award it legal fees. Simply because defendant may incur legal fees in connection with this action is not a basis to pursue a cause of action for those legal fees. And, as noted above, an insurer is entitled to seek relief against a medical provider where, as here, it believes that there is a basis to deny claims. It is, of course, axiomatic that “In this State, and indeed, in the rest of the country, the longstanding ‘American rule’ precludes the prevailing party from recouping legal fees from the losing party except where authorized by statute, agreement or court rule” (*Gotham Partners, L.P. v High Riv. Ltd. Partnership*, 76 AD3d 203, 204, 906 NYS2d 205 [1st Dept 2010] [internal quotations and citations omitted]).

Third Counterclaim

Defendant contends that plaintiffs have violated General Business Law § 349 and it seeks at least \$1 million plus treble and exemplary damages. It argues that most claimants and medical providers will not dispute plaintiffs' unwillingness to pay benefits and so plaintiffs will therefore be the beneficiary of this "deceitful" behavior.

The Court dismisses this counterclaim. A claim under General Business Law § 349 requires that a party "allege that: (1) the defendant's conduct was consumer-oriented; (2) the defendant's act or practice was deceptive or misleading in a material way; and (3) the plaintiff suffered an injury as a result of the deception" (*Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co., Inc.*, 37 NY3d 169, 176, 150 NYS3d 79 [2021]).

Defendant fails on all three elements. It did not sufficiently allege how plaintiffs' conduct was consumer-oriented and not a private dispute between plaintiffs and defendant (*see id.* at 177). Private contractual disputes are not the type of consumer-oriented conduct that this statute is focused on. And while defendant clearly disputes plaintiffs' allegations, that does not state a counterclaim based on a deceptive or misleading practice. Plaintiffs are permitted, under certain circumstances, to deny no-fault claims. That effort—to deny claims—is not inherently deceptive, even if plaintiffs are ultimately unsuccessful in this litigation or in the underlying arbitrations.

Fourth Counterclaim

In this cause of action, defendant complains that plaintiffs brought a similar action in federal court in Brooklyn and that case was resolved without any finding of wrongdoing. It concludes that this case is therefore an abuse of process.

“Abuse of process has three essential elements: (1) regularly issued process, either civil or criminal, (2) an intent to do harm without excuse or justification, and (3) use of the process in a perverted manner to obtain a collateral objective” (*Curiano v Suozzi*, 63 NY2d 113, 116, 480 NYS2d 466 [1984]).

The Court also severs and dismisses this counterclaim. “[T]he institution of a civil action by summons and complaint is not legally considered process capable of being abused” (*id.*). Moreover, as plaintiffs point out, the federal case was resolved in January 2018 and none of the claims at issue in this case predate 2018 so the disputes in the federal case are not relevant here for purposes of an abuse of process counterclaim.

MS002

In this motion, plaintiffs seek injunctive relief staying all proceedings relating to the claims identified in the complaint. They emphasize that defendant systematically refused to appear or complete EUOs and failed to respond to written verification requests. Plaintiffs demand that this Court should stay the adjudication and commencement of all litigation and arbitration actions regarding no-fault claims brought by defendant pending resolution of this action. They insist that they will suffer irreparable injury if they have to defend suits and arbitrations while this order to show cause is pending.

In opposition, defendant complains that plaintiffs are seeking to stay other cases, not the instant litigation. It argues that plaintiffs have not met their burden to show irreparable harm, nor has it shown a likelihood of success on the merits.

In reply, plaintiffs emphasize that all the elements of a preliminary injunction inure in their favor.

The Court observes that the prior judge assigned to this matter denied the request for a temporary restraining order in October 2022 but, obviously, never issued a decision on this motion.

This Court denies the motion for an injunction. “Such drastic relief is appropriate only where a party has established “(1) a likelihood of success on the merits of the pending action, (2) irreparable injury absent such relief, and (3) a balancing of the equities in favor of the relief sought. The purpose of such relief is not to reach a determination of the ultimate merits of the action, but to “maintain the status quo” pending such resolution” (*New York Auto. Ins. Plan v New York Schools Ins. Reciprocal*, 241 AD2d 313, 314, 241 AD2d 313 [1st Dept 1997] [internal quotations and citations omitted]). “Injunctive relief is also inappropriate inasmuch as [the party] concedes that the injunction would have the effect of granting it the ultimate relief” (*SportsChannel Am. Assoc. v Natl. Hockey League*, 186 AD2d 417, 418, 589 NYS2d 2 [1st Dept 1992]).

First, and most importantly, the relief plaintiffs seek in this motion is too similar to the relief plaintiffs seek in the case itself. That is, the complaint demands declaratory relief that plaintiffs don’t have to pay the subject claims identified in the pleading and this application seeks a stay for the exact same list of claims. In other words, plaintiffs want the relief they request as the ultimate outcome of this case to be the status quo while this case proceeds. This Court declines to do so as that is not the purpose of a preliminary injunction—it would fundamentally change the status quo.

Even on the merits, the Court would also deny the motion. That plaintiffs will have to expend resources to defend those claims is of no moment. That is simply part of being in the no-

fault business as noted above in connection with defendant’s motion. Simply incurring expenses is not irreparable harm sufficient to impose a drastic remedy staying hundreds of claims.

Summary

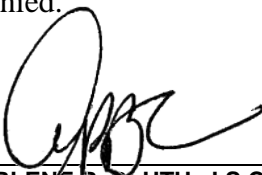
Again, this Court apologizes for the absurd delay and that this case was obviously ignored by the prior judge. But now there is a new Judge and to get this case moving, the Court schedules a conference for February 26, 2026 at 10 a.m. By February 19, 2026, the parties are directed to upload a discovery stipulation detailing what discovery remains and specific deadlines to complete these tasks (language such as “to the extent not provided” and “on or before” will not be approved). If an agreement cannot be reached, then the parties can submit letters that provide an update about discovery. Based on the submissions the Court will assess whether or not an in-person conference is required. If nothing is uploaded, then the Court may adjourn the conference, require an in-person appearance or order a note of issue be filed (please check the docket and review this part’s rules).

Accordingly, it is hereby

ORDERED that plaintiffs’ motion to dismiss defendant’s counterclaims is granted and these counterclaims are severed and dismissed; and it is further

ORDERED that plaintiff’s motion for injunctive relief is denied.

1/5/2026
DATE


ARLENE P. BLUTH, J.S.C.

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