

**Commissioners of the State Ins. Fund v
Icon Interiors Inc.**

2026 NY Slip Op 30114(U)

January 5, 2026

Supreme Court, New York County

Docket Number: Index No. 452278/2020

Judge: Arlene P. Bluth

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

COMMISSIONERS OF THE STATE INSURANCE FUND

Plaintiff,

- v -

ICON INTERIORS INC.,

Defendant.

-----X

INDEX NO. 452278/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

were read on this motion to/for TRANSFER

Defendant's motion to transfer this case to the Court of Claims is denied and plaintiff's cross-motion to inter alia dismiss defendant's counterclaim is granted.

Background

This action concerns workers' compensation insurance coverage provided to defendant by plaintiff. Plaintiff alleges that it provided this coverage from July 2, 2013 through November 29, 2018, when it was cancelled. It contends that defendant, as part of the insurance contract, agreed to pay premiums based on payroll and other charges and that it owes over \$4 million.

In this motion, defendant seeks to transfer this case to the Court of Claims on the ground that plaintiff overcharged defendant for several policy periods and so it counterclaimed for an accounting of the monies due.

In opposition and in support of its claim to dismiss the counterclaim, plaintiff argues that defendant's counterclaims are time-barred. It maintains that it sent its last bill to defendant on June 30, 2019 and that defendant did not follow the proper procedure (either a written notice of intention to file a claim or a claim served on the attorney general) within the statutory time period. Plaintiff adds that the counterclaim does not comply with the Court of Claims Act to the extent that it does not specify when and where the claim arose. Finally, plaintiff observes that the policyholders, such as defendant, have a right to administratively challenge the premiums charged and that defendant failed to utilize this process.

In opposition and in reply, defendant argues that plaintiff never completed audits for the 2015-16 and 2016-17 periods. It argues that its broker sent a letter to plaintiff upon receiving the demand for more than \$4 million and that defendant did not hear back until this lawsuit was filed. Defendant argues that the Court of Claims has exclusive jurisdiction to handle the counterclaim and, accordingly, this dispute. It adds that plaintiff's failure to complete certain audits renders plaintiff's assertion about defendant's failure to utilize administrative remedies as futile.

In reply, plaintiff argues that defendant did not properly or timely assert the counterclaim and so this Court must dismiss it. Plaintiff adds that it was unable to complete the aforementioned audits because defendant did not make its books and records available for these audits. It claims that defendant cancelled various appointments and refused to reschedule.

Discussion

The Court must first address the elephant in the room: that this motion was initially returnable in 2021, when there was a different judge assigned to this matter and that judge adjourned it a few times, eventually setting a January 11, 2022 return date. Unfortunately,

nothing happened after that date until this matter was assigned to this part in December 2025.

There is no excuse for ignoring a case. On behalf of the court system, this Court profusely apologizes for this extreme delay—the fact is this motion should have been decided a long, long time ago.

Turning to the merits, the Court denies defendant’s motion and grants plaintiff’s cross-motion.

Court of Claims Act § 10(4) provides that “A claim for breach of contract, express or implied, and any other claim not otherwise provided for by this section, over which jurisdiction has been conferred upon the court of claims, shall be filed and served upon the attorney general within six months after the accrual of such claim, unless the claimant shall within such time serve upon the attorney general a written notice of intention to file a claim therefor, in which event the claim shall be filed and served upon the attorney general within two years after such accrual.”

There is no dispute that defendant never filed any timely notice of claim in compliance with the aforementioned Court of Claims Act provision. To the extent that defendant points to Court of Claims Act § 10(6) for the proposition that it could seek permission from the Court of Claims to file an untimely claim, that assertion is beside the point because defendant did not demonstrate that it took such action. In other words, defendant did not submit proof that, for instance, it had commenced an affirmative case in the Court of Claims against plaintiff and made a motion under this provision for permission to file a late notice of claim. That means that if this Court were to grant the motion, defendant could theoretically never make that motion and plaintiff would be left in limbo or at the very least, forced to deal with another long delay.

It certainly is the case that seeking a counterclaim for recoupment of premiums from plaintiff is only cognizable in the Court of Claims (*Commissioners of State Ins. Fund v J.D.G.S. Corp.*, 253 AD2d 368, 369, 676 NYS2d 575 [1st Dept 1998]). But the issue here is that defendant did not timely or properly follow the correct procedure to assert such a claim.

Defendant's other arguments are also without merit. That plaintiff did not complete the audit in certain years is not a reason to send this case to the Court of Claims where, as plaintiff explained, the completion of the audits requires the defendant to provide the necessary access. And defendant did not provide an adequate reason for why it did not utilize the administrative remedies once it received plaintiff's demand for the \$4 million—instead, it sent a letter to plaintiff.

Summary

To be clear, plaintiff (should it prevail) will have to prove the amount that is due. The Court's decision on these motions merely finds that defendant cannot pursue an affirmative overpayment claim; defendant may, of course, challenge plaintiff's calculations which is permissible in this court.

Of course, defendant must cooperate in discovery and provide access to records so proper audit-type discovery can occur. To get this case moving again (this Court has no idea what has happened in the last four years), the Court will schedule 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. 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 or require an in-person appearance or

order that a note of issue be filed (please check the docket and review this part's rules - language such as "on or before" and "to the extent not otherwise provided" will not be approved).

Accordingly, it is hereby

ORDERED that defendant's motion is denied and plaintiff's cross-motion to dismiss the counterclaim is granted.

1/5/2026

DATE


ARLENE P. BLUTH, 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

REFERENCE