

Hereford Ins. Co. v All Nations DME Corp.

2026 NY Slip Op 30208(U)

January 12, 2026

Supreme Court, New York County

Docket Number: Index No. 156112/2021

Judge: Lynn R. Kotler

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYNN R. KOTLER PART 08

Justice

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HEREFORD INSURANCE COMPANY,

Plaintiff,

- v -

ALL NATIONS DME CORP, AZTEC MEDICAL PA,
BAYSIDE DRUGS, INC., CITIMED COMPLETE MEDICAL
CARE, PC, CHI CHINESE ACUPUNCTURE, PC, ELIOT RX
PHARMACY INC., FLORAL PARK DRUGS, INC.,
HACKENSACK SPECIALTY ASC, LLC, INTEGRATED
SPECIALTY ASC, LLC, KALFAYAN MEDICAL CARE,
PLLC, K AND S SURGICAL AND ANESTHESIA GROUP,
LLC, KARIN GEPP, LIFELINE MEDICAL IMAGING, PC,
MEDICAL DIAGNOSTIC CENTER, OZONE PARK SUPPLY
INC., PLATINUM ANESTHESIA & ORTHOPEDIC GROUP,
QUALITY ANESTHESIA SERVICES, RIGHT MOTION PT,
PC, STAR OF NY CHIROPRACTIC DIAGNOSTICS,
STUART SPRINGER MD, PC, TAEYONG KIM PT, YK
MEDICAL, PLLC, DEVON KELLY, MARCUS LUCAS,
MARVIN WILSON,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 48, 70, 71, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 163, 164, 165, 166, 167, 168, 169, 170, 171

were read on this motion to/for SUMMARY JUDGMENT (BEFORE JOINDER).

**DECISION + ORDER ON
MOTION**

BACKGROUND

In this action, plaintiff-insurer Hereford Insurance Company seeks a declaratory judgment that it has no obligation to pay no-fault benefits in connection with a motor vehicle accident that occurred on December 28, 2020 (the “accident”). The accident involved a collision between a livery vehicle insured by plaintiff (the “vehicle”) and occupied by individual defendants Devon Kelly, Marvin Wilson, and Marcus Lucas (collectively, the “claimants”), and a second vehicle whose driver fled the scene on foot. The claimants were treated at the scene of the accident by emergency medical services (“EMS”) and later sought medical treatment from the medical provider defendants for injuries sustained in the accident. As relevant here, Kelly claimed injuries to his left shoulder, neck, and back, and underwent surgery on his left shoulder on March 24, 2021, while Wilson claimed injuries to his right wrist, shoulder, neck, back, and right knee, and underwent surgery on his right wrist on March 24, 2021. In its amended

complaint, plaintiff asserts no-coverage defenses based on theories of: (1) a founded belief that the claimants' injuries were not causally related to the covered accident, and (2) breach of conditions precedent relating to claimant-subscription requirements.

By an order dated August 9, 2022, the court granted plaintiff's motion pursuant to CPLR 3215 for leave to enter a default judgment against non-answering defendants All Nations DME Corp, Aztec Medical PA, Citimed Complete Medical Care, PC, Eliot RX Pharmacy Inc., Hackensack Specialty ASC, LLC, Integrated Specialty ASC, LLC, Quality Anesthesia Services, and Marcus Lucas (the "defaulting defendants") (MOT SEQ 002). Plaintiff was granted an order declaring that it was not required to pay any sums, monies, damages, awards and/or benefits to the defaulting defendants including but not limited to Mandatory Personal Injury Protection (No-Fault), Additional Personal Injury Protection, Bodily Injury and Property Damage Liability, and Supplemental Uninsured/Underinsured Motorist Coverage, in connection with the accident.

Plaintiff previously discontinued the action, by stipulation dated August 11, 2021, as against defendants Kalfayan Medical Care, PLLC, K and S Surgical and Anesthesia Group, LLC, Platinum Anesthesia & Orthopedic Group, YK Medical, PLLC, and Star of NY Chiropractic Diagnostic PC; by stipulation dated January 13, 2022, as against defendant Stuart Springer MD, PC; by stipulation dated January 19, 2022, as against defendant Bayside Drugs, Inc.; by stipulation dated January 20, 2022, as against defendant Ozone Park Supply Inc.; by stipulation dated May 4, 2022, as against defendants Karin Gepp, Lifeline Medical Imaging, PC, Medical Diagnostic Center, and Right Motion PT, PC; and, by stipulation dated June 3, 2022, as against defendant Taeyong Kim PT. That left four answering defendants remaining: Chi Chinese Acupuncture, PC; Floral Park Drugs, Inc.; Devon Kelly; and Marvin Wilson.

Defendants Kelly and Wilson (the "defendants") now move pursuant to CPLR 3212 for partial summary judgment dismissing plaintiff's first cause of action disclaiming coverage of the accident based on a theory of founded belief. Plaintiff opposes the motion. The motion is granted.

DISCUSSION

On a motion for summary judgment, the proponent bears the initial burden of making a prima facie showing that it is entitled to summary judgment as a matter of law, providing sufficient evidence that no material issues of triable fact exist (*see Trustees of Columbia Univ. in the City of N.Y. v D'Agostino Supermarkets, Inc.*, 36 NY3d 69, 74 [2020]; *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Once met, the burden shifts to the opposing party to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact" (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see De Lourdes Torres v Jones*, 26 NY3d 742, 763 [2016]). On a motion for summary judgment, facts must be viewed in the light

most favorable to the non-moving party (*Vega v Restani Constr. Corp.* 18 NY3d 499, 503 [2012]).

An insurer may disclaim coverage based upon “the fact or founded belief that the alleged injury does not arise out of an insured incident” (*Central Gen. Hosp. v Chubb Grp. of Ins. Co.*, 90 NY2d 195, 199 [1997]; see *Unitrin Safeguard Ins. Co. v Manuel*, 236 AD3d 558, 559 [1st Dept. 2025]). The no-fault insurer asserting such a lack of coverage defense must demonstrate the facts elicited during an investigation that make up the founded belief (see *Unitrin Safeguard Ins. Co.*, 236 AD3d at 559; *Nationwide Gen. Ins. Co. v South*, 223 AD3d 411, 411 [1st Dept. 2024]; *State Farm Mut. Auto. Ins. Co. v AK Glob. Supply Corp.*, 203 AD3d 556, 556 [1st Dept. 2022]; see also *V.S. Med. Servs., P.C. v Allstate Ins. Co.*, 25 Misc3d 39, 41 [2nd Dept. 2009]).

In support of their motion, defendants submit their own sworn affidavits (NYSCEF Doc. Nos. 138-39) and transcripts of their examination under oath (“EUO”) and deposition testimonies (NYSCEF Doc. Nos. 71, 140, 142-44), in which they each testify regarding the injuries they suffered in the accident. Specifically, Kelly testifies regarding injuries to his neck, back, and left shoulder (see NYSECF Doc. Nos. 138 ¶¶ 4-14; 140 at 16:12-17:18, 28:17-29:24; 143 at 28-30), while Wilson testifies regarding injuries to his right wrist, neck, and back (NYSCEF Doc. No. 71 at 35:9-39:9; 139 ¶¶ 4-14; 142 at 20:12-21:25, 25:7-26:6). Defendants further submit medical records for examination and treatment they received in connection with the injuries suffered in the accident, which are generally consistent with their respective accounts of their injuries and treatment (NYSCEF Doc. Nos. 141, 145-46). These submissions are sufficient to demonstrate, *prima facie*, that defendants suffered injuries causally related to the accident, and are therefore entitled to coverage for their injuries and associated medical treatment.

Plaintiff, in opposition, attempts to demonstrate that defendants’ injuries did not arise from the accident. In addition to the evidence submitted by defendants, plaintiff relies on the sworn affidavit of its claims adjuster and the police report for the subject accident, both of which were previously submitted in support of a prior motion (NYSCEF Doc. Nos. 48 & 50). However, for the reasons that follow, plaintiff fails to raise a triable issue of fact as to whether defendants’ injuries are causally related to the subject accident.

Plaintiff attempts to rely on the police report to show that the accident, and defendants’ allegedly resulting injuries, are suspect and illegitimate (see NYSECF Doc. No. 48 at ¶ 12; NYSECF Doc. No. 136 at ¶ 33). This reliance is misplaced. Contrary to plaintiff’s contention, the police report does not fail to identify the second vehicle involved in the accident (NYSECF Doc. No. 163 at ¶ 14). Rather, the report expressly identifies the second vehicle as a Minnesota-registered 2003 Nissan Sedan with license plate number AHN423. Similarly unavailing is plaintiff’s attempt to cast doubt on the legitimacy of defendants’ claimed injuries based on purported notations in the police report indicating that defendants had no visible injuries and did

not request or receive immediate medical attention at the scene of the accident (NYSCEF Doc. No. 163 at ¶ 15). The report, however, includes no such notations. Instead, it expressly names both defendants as injured persons and notes that EMS treated defendants at the scene (*see* NYSCEF Doc. No. 50 at 1-2).

Plaintiff further contends that defendants' EUO testimonies are "inconsistent", "questionable", and raise "additional issues as to the legitimacy" of the accident and defendants' resulting injuries (*see* NYSCEF Doc. No. 48 at ¶¶ 11-12; NYSCEF Doc. No. 136 at ¶ 36; NYSCEF Doc. No. 163 at ¶ 17). Plaintiff points to inconsistencies in defendants' accounts of the time and location of the accident and their whereabouts prior to the accident (*see* NYSCEF Doc. No. 48 at ¶¶ 10-12; NYSCEF Doc. No. 136 at ¶ 36; NYSCEF Doc. No. 163 at ¶ 17). However, plaintiff provides no explanation as to how such inconsistencies are relevant in showing that defendants' injuries did not arise from the accident, particularly given the documentary evidence, including the police report, verifying that defendants were injured in the accident (*see Webster Diagnostic Medicine, P.C. v State Farm Ins. Co.* 15 Misc.3d 97, 99 [App Term 2nd Dept. 2007]). Similarly unavailing is plaintiff's contention that defendants provided inconsistent accounts as to where each of them was seated in the vehicle at the time of the accident (*see* NYSCEF Doc. No. 136 at ¶ 36; NYSCEF Doc. No. 163 at ¶ 17). Even looking at the EUO testimonies in the light most favorable to plaintiff, it is clear that Kelly, despite some initial right-left confusion, testified that he was seated in the left-hand backseat (*see* NYSCEF Doc. No. 71 at 247:23-250:7), while Wilson testified that he was seated in the right-hand backseat (*id.* at 33:11-18, 38:14-25).

Plaintiff also argues that inconsistencies between defendants' EUO and deposition testimonies raise questions as to the "medical necessity" of defendants' treatment, contributing to its belief that defendants' treatment was not causally related to the accident (*see* NYSCEF Doc. No. 163 at ¶ 17). However, defendants' medical evidence shows that defendants' treatment was related to their reported injuries (*see* NYSCEF Doc. Nos. 141, 145-46), and plaintiff presents no medical expert evidence to support its conclusion that any of defendants' treatment was excessive. Moreover, whether any aspect of defendants' treatment was excessive is a separate defense that plaintiff has not pleaded and that is not relevant to the lack-of-coverage defense at issue (*see Central Gen. Hosp. v Chubb Grp. of Ins. Cos.*, 90 NY2d 195, 201-02 [1997] [distinguishing between insurers' defenses based on lack of coverage and excessive medical treatment]).

Pointing to Wilson's testimony that he sustained injuries to his neck, back, and knee as a result of prior accidents in 2011 and 2017, plaintiff seeks to imply that Wilson staged the subject accident to seek treatment for pre-existing injuries (*see* NYSCEF Doc. No. 163 at ¶ 17). However, plaintiff offers no evidence that Wilson's prior injuries persisted, such that one could reasonably infer that some of his current claimed injuries are not causally related to the subject

accident. As such, plaintiff's suggestion that Wilson sought treatment following the accident for pre-existing injuries is simply conclusory.

The court has considered plaintiff's additional arguments, even if not specifically addressed herein, and finds them unavailing.

CONCLUSION

Accordingly, it is

ORDERED that the motion of defendants Devon Kelly and Marvin Wilson for partial summary judgment dismissing plaintiff Hereford Insurance Company's first cause of action is granted, and the first cause of action is hereby dismissed as against the moving defendants; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

1/12/2026
DATE


LYNN R. KOTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE