

**Silverson, Pareres & Lombardi, LLP v New York  
Healthcare Ins. Co., Inc.**

2026 NY Slip Op 30398(U)

January 29, 2026

Supreme Court, New York County

Docket Number: Index No. 650790/2019

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

SILVERSON, PARERES & LOMBARDI, LLP

Plaintiff,

- v -

NEW YORK HEALTHCARE INSURANCE COMPANY, INC.  
RISK RETENTION GROUP,

Defendant.

-----X

INDEX NO. 650790/2019  
MOTION DATE N/A, N/A  
MOTION SEQ. NO. 007 008

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 007) 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 225, 226, 227, 228

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 008) 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 229

were read on this motion to/for JUDGMENT - SUMMARY.

Motion Sequence Numbers 007 and 008 are consolidated for disposition. Plaintiff’s motion (MS007) for summary judgment on its account stated caused of action is granted and defendant’s motion for summary judgment based on *inter alia* spoliations is denied.

**Background**

This is a legal fees action in which plaintiff seeks to recover what it claims are unpaid invoices arising out of its legal representation of defendant and its insureds from early 2015 through 2018. Plaintiff contends that these invoices total \$132,667.34.

Plaintiff moves for summary judgment and contends that defendant did not pay invoices arising out of four lawsuits in which it defended defendant’s insureds. It stresses that defendant

did not raise any timely objections. In fact, plaintiff argues that defendant did not raise any objections prior to the commencement of this action. It observes that defendant is a risk retention group that provides professional liability insurance in New York and that defendant contracted with ESIS Proclaim to serve as third-party claims administrator. Proclaim was tasked with reviewing the bills received by plaintiff.

Plaintiff explains that of the four cases for which it seeks reimbursement, defendant only made a partial payment for one of them (it says plaintiff paid just over \$31,000 of the purportedly \$61,000 due).

Defendant moves for summary judgment and contends that plaintiff only sent invoices to its third-party claims administrator (Proclaim) and never communicated directly with defendant until February 2018. It claims that at that point, it confronted plaintiff about its inflated billing.

Defendant also argues that plaintiff's amended complaint should be stricken because plaintiff "willfully destroyed material evidence." Specifically, plaintiff contends that it sought the time entries and time sheets entered by plaintiff's attorneys to confirm the accuracy and legitimacy of the invoices. Defendant argues that it required this information to "prove the fraudulent entries on the invoices." It argues that during the pendency of this litigation, plaintiff stopped using the particular software it utilized for storing these contemporaneous records and that no time or billing entries were preserved. Defendant contends that without this information, plaintiff now cannot rebut "the showing of fraud" in the invoices, including double billing and inflated billing.

It argues that plaintiff's breach of contract claim should be dismissed because plaintiff did not produce any contract between the parties. With respect to two of the cases for which

plaintiff submitted invoices (the Coleman and Coffey cases), defendant claims it was not the responsible carrier and so it need not pay those bills.

Plaintiff contends there is no basis to strike its operative pleading based on a spoliation theory. It maintains that it provided detailed invoices and that there is no requirement that it provide the underlying billing or time entries in order to seek recovery here. Plaintiff also claims it was entitled to change its electronic file and billing system. It argues that, in any event, it need not show the reasonableness of its fees in order to prove an account stated cause of action.

### **Discussion**

“An account stated has long been defined as an account balanced and rendered, with an assent to the balance express or implied; so that the demand is essentially the same as if a promissory note had been given for the balance. It is an agreement, independent of the underlying agreement, regarding the amount due on past transactions. A defendant's receipt and retention of the plaintiff law firm's invoices seeking payment for professional services rendered, without objection within a reasonable time, gives rise to an actionable account stated, thereby entitling the plaintiff to summary judgment in its favor” (*Aronson Mayefsky & Sloan, LLP v Praeger*, 228 AD3d 182, 184-85, 212 NYS3d 52 [1st Dept 2024] [internal quotations and citations omitted]).

“In the context of an account stated pertaining to legal fees, a firm does not have to establish the reasonableness of its fee, because the client's act of holding the statement without objection will be construed as acquiescence as to its correctness” (*Lapidus & Assoc., LLP v Elizabeth St., Inc.*, 92 AD3d 405, 405-06, 937 NYS2d 227 [1st Dept 2012] [internal quotations and citations omitted]).

Here, plaintiff met its burden to show that it sent the invoices to the required party, Proclaim. It attached the bills it sent which date back to 2014 (NYSCEF Doc. Nos. 186-89). Plaintiff also attached the affirmation of Carl Ferdenzi, Vice President of Proclaim, who explains that Proclaim entered into a contract with plaintiff in 2014 (on behalf of defendant) to retain plaintiff to represent defendant's insureds (NYSCEF Doc. No. 189, ¶ 3). Mr. Ferdenzi explains that plaintiff sent quarterly invoices to Proclaim, which accepted the bills and reviewed them (*id.* ¶ 4). He added that Proclaim hired plaintiff to handle the legal defense in the four cases identified by plaintiff (*id.* ¶ 5).

Mr. Ferdenzi contends that:

“Each of SPL's invoices attached to the Amended Complaint was received by Proclaim and reviewed by the claims person in charge of the case at Proclaim for accuracy and veracity. The claims person reviewing these invoices had firsthand knowledge of the developments in each case and was fully aware of the scope of legal services and expenses that were provided by SPL in the prior quarter. It was only after a thorough review of each invoice submitted by SPL that the Proclaim claims person approved the invoices and sent them to NYHIC for payment. This was the method by which SPL's invoices were to be processed and paid, and this was the method by which SPL submitted each invoice attached to the Amended Complaint” (*id.* ¶ 8).

He concluded that Proclaim approved all of the bills at issue here and that years later, he discovered that defendant had refused to pay the bills (*id.* ¶13).

Defendant failed to raise an issue of fact in opposition. That plaintiff did not directly send the bills to defendant is of no moment because that was the workflow created by defendant. In other words, defendant cannot hire a third-party claims administrator to handle these issues and then contend that it need not pay bills or timely object to bills submitted through that process. Defendant did not contend anywhere in its papers that plaintiff never sent these invoices or that it never got the invoices from Proclaim. Rather, it contends that it did not receive these bills directly from plaintiff. That does not create an issue of fact.

Defendant also did not demonstrate that it timely raised an objection to these invoices. It relies upon a contention that it objected in February 2018. But, as best this Court can tell, that objection related to a different matter than the four cases upon which plaintiff seeks recovery (NYSCEF Doc. No. 104 at 15 of 44). Defendant needed to point to specific and timely objections to the numerous bills sent in the four specific cases in order to raise an issue of fact. It was not entitled to rely upon vague allusions to objections in light of the invoices dating back to 2014.

The Court also rejects defendant's contention that spoliations are appropriate or that plaintiff's change in document storage methods constitutes an issue of fact. The bills plaintiff attached as part of its prima facie case are the typical type of legal invoices submitted in routine unpaid legal fees cases. They contain descriptions of the work performed and the number of hours expended.

Defendant's contention that it needs to see the contemporaneous time records is without merit given the submission of the invoices. It did not include anything to substantiate its claim of fraudulent billing particularly given the affidavit from Proclaim's VP, who asserts that he reviewed the bills from plaintiff and sent them to defendant. A conclusory assertion of fraud (a serious contention) is not sufficient to defeat the invoices produced in this record. And plaintiff was entitled to change its electronic system in 2023, more than four years after this case began. This is not a situation in which plaintiff curiously modified its system immediately after bringing a lawsuit. It need not continue with an apparently outdated program simply because this lawsuit has dragged along for so long.

Plus, as noted above, the analysis for an account stated cause of action is not based on any consideration of the reasonableness of the bills. It focuses only on whether the bills were sent and whether a timely objection was raised.

Defendant's other objection that plaintiff is not entitled to recover in relation to two cases is also without merit. The record on this motion shows that plaintiff submitted bills for these cases and that defendant never timely objected and certainly never told plaintiff to not work on these matters, for any reason (defendant says that the matter was transferred at some point). Defendant cannot now suddenly avoid its obligation without informing plaintiff.

### **Summary**

The Court recognizes that this motion was pending for quite a while prior to this case's reassignment to the undersigned in December 2025. The Court apologizes for this delay- this motion should have been decided well before any reassignment.

On these papers, it seems that the vast majority of defendant's arguments arise out of the system it created. It instructed the attorneys to send the bills to a company it hired, Proclaim, so Proclaim could review and approve the legal bills incurred for its insureds and then Proclaim would forward those bills to defendant to pay. The affirmation from Proclaim's VP makes clear that plaintiff did what it was supposed to do (sent the bills) and Proclaim did what it was supposed to do (processed the bills in question and sent them to defendant for payment). It was then defendant's obligation to pay or raise an objection—defendant was not permitted to extend the time for it to raise reasonable objections to the bills indefinitely by blaming Proclaim. Any issues between Proclaim and defendant, if there are any, are not a basis to deny plaintiff's motion.

Defendant’s arguments about spoliation miss the point. The fact is that plaintiff performed the work and submitted bills. Defendant had ample opportunity to scrutinize the bills (or tell Proclaim to scrutinize those bills on its behalf). Raising objections now, years later, contradicts the entire purpose of the account stated theory of recovery.

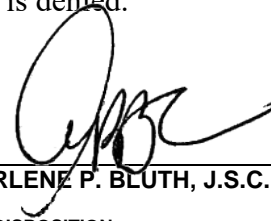
Accordingly, it is hereby

ORDERED that plaintiff’s motion for summary judgment is granted and the Clerk is directed to enter judgment in favor of plaintiff and against defendant in the amount of \$132,667.34 plus statutory interest from February 7, 2019 along with costs and disbursements upon presentation of proper papers therefor; and it is further

ORDERED that defendant’s motion for summary judgment is denied.

1/29/2026

DATE



ARLENE P. BLUTH, J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: