

State Farm Fire & Cas. Co. v Sahadeo

2026 NY Slip Op 31370(U)

April 6, 2026

Supreme Court, New York County

Docket Number: Index No. 159566/2024

Judge: Nicholas W. Moyne

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. NICHOLAS W. MOYNE PART 41M

Justice

-----X

STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

- v -

DEEPA SAHADEO, HEVISHKAR HARILALL, AILIN CHINESE ACUPUNCTURE, PC, AMERICAN MEDICAL INITIATIVES, PC, BORUKHOV RADIOLOGY PLLC, BOWEN MD, PLLC, CD ORTHOPEDICS PC, CHRISTOPHER DURANT, KRASNER CHIROPRACTIC PC, MID-ROCKAWAY AVE MEDICAL, PC, OBUS PRO INC, SEDATION VACATION PERIOPERATIVE MEDICINE PLLC

Defendant.

-----X

INDEX NO. 159566/2024
MOTION DATE 08/28/2025, 11/10/2025
MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 44, 45, 46, 47, 48, 50, 51

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) , 55, 56, 57, 58, 59, 60, 61

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

Upon the foregoing documents, it is

Plaintiff moves, in motion sequence 002, for summary judgment against defendants AILIN CHINESE ACUPUNCTURE, PC; BOWEN MD, PLLC; BORUKHOV RADIOLOGY PLLC DBA HIGHLINE RADIOLOGY; CD ORTHOPEDICS, P.C. D/B/A OLYMPIC ORTHOPEDIC; KRASNER CHIROPRACTIC PC; MID-ROCKAWAY AVE MEDICAL, PC; and OBUS PRO, INC. Plaintiff moves, in motion sequence 003, for a default judgment against defendant CHRISTOPHER DURANT, MD. Plaintiff previously obtained a default judgment against the remaining defendants. The defendants oppose motion sequence 002. Motion sequence 003 is unopposed.

Default Judgment

Plaintiff's motion for a default judgment against defendant Christopher Durant, MD is denied. Said defendant was purportedly served pursuant to CPLR §308(2) by delivering a copy of the summons and complaint to a person of suitable age and discretion at said defendant's usual place of abode on December 6, 2024 (see Aff. of Service, NYSCEF Doc. Nos. 53, 57). However, the affidavit of service does not indicate

that a copy of the affidavit of service was mailed to the defendant within twenty days of delivery of the summons to the person of suitable age and discretion as required by CPLR § 308(2). Therefore, service was never completed upon defendant CHRISTOPHER DURANT, MD. Furthermore, service pursuant to CPLR § 308(2) is not complete until ten days after filing of the affidavit of service. The affidavit of service was not filed until October 9, 2025, which is more than 120 days after commencement of this action. Accordingly, the complaint must be dismissed as to defendant CHRISTOPHER DURANT, MD pursuant to CPLR § 306-b. Therefore, the plaintiff's motion for a default judgment is denied.

Summary Judgment

“The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers” (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of any material issues of fact or where the issue is arguable (*Glick & Dolleck, Inc. v Tri-Pac Export Corp.*, 22 NY2d 439, 441 [1968]). “If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion” (CPLR § 3212[b]). “In considering a summary judgment motion, evidence should be analyzed in the light most favorable to the party opposing the motion” (*Martin v Briggs*, 235 AD2d 192, 196 [1st Dept 1997]). “In opposing a motion for summary judgment, once a prima facie showing has been made, it is incumbent upon a defendant to come forward with matters of an evidentiary nature to demonstrate the presence of triable issues. General averments do not suffice. The defendant is required to assemble, lay bare, and reveal his proofs in order to show that his defenses are real and capable of being established upon a trial” (*Steingart Assoc., Inc. v Sandler*, 28 AD2d 801, 802-03 [3d Dept 1967]). “Where competent evidence is presented by a defendant in support of a motion for summary judgment, the burden shifts to plaintiff to produce proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*IDX Capital, LLC v Phoenix Partners Group*, 83 AD3d 569, 570 [1st Dept 2011], *affd sub nom. IDX Capital, LLC v Phoenix Partners Group LLC*, 19 NY3d 850 [2012]).

Plaintiff commenced this action seeking a judgment declaring that they have no duty to provide reimbursement for any claims or bills submitted for medical care arising out of an alleged automobile collision on May 14, 2024, involving defendants Deepa Sahadeo or Hevishkar Harilall (the “individual defendants”) submitted under claim number 52-67N5-34W. Plaintiff contends that the individual defendants breached a condition precedent to coverage by failing to subscribe and return the transcripts from their respective Examinations Under Oath (“EUO”). Defendant Sahadeo appeared for their EUO on July 30, 2024. Defendant Harilall appeared for their EUO on July 26, 2024. As set forth in the affirmations of Lindsay Padover, Esq. (NYSCEF Doc. No. 46), and Tammy Vargas (NYSCEF Doc. No. 47), the plaintiff requested that the individual defendants subscribe and return the transcripts of their EUOs, thereby breaching a

condition precedent to coverage under the insurance policy. Therefore, the plaintiff has set forth their prima facie entitlement to summary judgment on the complaint. The defendant has failed to submit an affirmation or affidavit or any other admissible evidence to raise a question of fact sufficient to defeat the plaintiff's showing of entitlement to summary judgment. Accordingly, the plaintiff's motion for summary judgment is granted.

Conclusion

As set forth herein above, it is hereby

ORDERED that the plaintiff's motion for a default judgment (motion sequence 003) is denied; and it is further

ORDERED that the complaint is dismissed as to defendant Christopher Durant, MD; and it is further

ORDERED that the plaintiff's motion for summary judgment is granted; and it is further

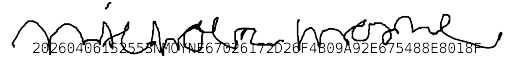
ORDERED, ADJUDGED, and DECLARED that defendants HEVISHKAR HARILALL and DEEPA SAHADEO each breached a condition precedent to coverage under the No-Fault Regulation and the subject policy of insurance by failing to subscribe and return the transcript from their respective examinations under oath; and it is further

ORDERED, ADJUDGED, and DECLARED that **STATE FARM FIRE & CASUALTY COMPANY**, owes no duty to pay any Mandatory Personal Injury Protection (No-Fault) claims/benefits sums, monies, damages, and/or awards to the defendants arising from the alleged automobile incident of May 14, 2024, accident under claim number 52-67N5-34W and any such lawsuits and/or arbitrations are hereby dismissed in accordance with this order; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment against all defendants other than Christopher Durant, MD.

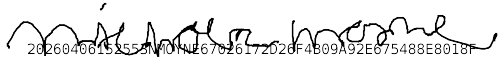
This constitutes the decision and order of the court.

Motion Sequence 002


202604061535581014267026172020F4609A92E875488E8018F

<u>4/6/2026</u> DATE					<u>NICHOLAS W. MOYNE, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/>	GRANTED IN PART <input 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

Motion Sequence 003


20260406152553M004267026172026F4509A92E675488E8018F

4/6/2026

DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: