

**Government Empls. Ins. Co. v Home Physician
Assistant Servs.**

2026 NY Slip Op 31474(U)

April 13, 2026

Supreme Court, Nassau County

Docket Number: Index No. 623242/2024

Judge: Rhonda E. Fischer

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU - CIVIL TERM PART 45

Present: HON. RHONDA E. FISCHER
Acting Justice of the Supreme Court

Government Employees Insurance Co., GEICO
Indemnity CO. GEICO General Insurance Company and
GEICO Casualty Co. (collectively "GEICO")

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MOTION SEQ. NO. 003

Plaintiff(s),

-against-

HOME PHYSICIAN ASSISTANT SERVICES,

Defendant(s).

The following papers were read on this motion:
NYSCEF Nos. 35-62

Plaintiff GEICO moves for an Order: granting plaintiff summary judgment against defendant, HOME PHYSICIAN ASSISTANT SERVICES and for such other and further relief as may be just, proper and equitable.

In support of the motion, GEICO supplies a spreadsheet listing each claim, when the requests for the EUOs were sent out, and the dates that the EUOs were to take place but did not due to defendant's failure to appear. GEICO also submits the affidavit of Anjelica Walsh, Claims Supervisor, and the affirmations of Tal Sloan, Esq. and Megan DiMiceli, Esq. Ms. Walsh details GEICO's regular and ordinary course of business in receiving and processing claims forms, and making demands for further verification, such as EUOs. Ms. Walsh further attests to the mailing of the EUO demands and claim denials. In their affirmations, Ms. DiMiceli and Ms. Sloan state that they were present on the dates the EUOs were to take place but did not due to defendant's failure to appear. GEICO also submits the affidavit Anna Jackson, an investigator with GEICO's Special Investigative Unit, describing GEICO's investigation into defendant's treatment and billing practices, which led to the EUO requests.

In opposition to the motion, defendant contends that there are issues of facts, such as whether the plaintiff's EUO requests were timely, as plaintiff's claim representative fails to submit admissible evidence as to when the bills and/or claims were received from the defendant. Defendant also argues that plaintiff has failed to demonstrate there is reasonable justification for the EUO. Defendant further argues that plaintiff's motion is premature pursuant to CPLR § 3212(f) as there has yet to be full disclosure, discovery, and/or EBT's exchanged.

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In reply on the motion, plaintiff contends that it established that the EUO notices were timely and properly mailed within the statutory time frames. Plaintiff further asserts that an insurer does not need to set forth objective reasons for requesting the EUOs in order to establish its prima facie entitlement to summary judgment and need only demonstrate that it twice demanded an EUO from the provider and that the provider twice failed to appear and that the insurer issued, a timely denial of the claim. In response to defendant's contentions that plaintiff's motion is premature, plaintiff asserts that defendant's speculation that discovery outstanding may lead to some evidence that may allow it to prevail in this matter cannot justify defeating plaintiff's motion.

The prescribed No-Fault endorsement in New York, 11 NYCRR § 65-1.1(d), explicitly states that insurers may reasonably require healthcare providers that take an assignment of benefits from an eligible injured person to submit to an EUO by any person named by the insurer. The prescribed No-Fault endorsement also contains a provision entitled "Conditions", which states that, as a condition precedent to coverage under the policy, the healthcare provider must fully comply with the insurer's request for an EUO (11 NYCRR § 65-1.1[d]). Thus, the failure of a healthcare provider to submit to an EUO constitutes a material breach of the insurance policy, and precludes recovery against the insurer (see also, *GLM Med, P.C. v State Farm Mut. Auto. Ins. Co.*, 30 Misc 3d 137[A] [App Term 2d Dept 2011]; *Five Boro Psychological Servs., P.C. v Progressive Northeastern Ins. Co.*, 39 Misc. 3d 141A [App Term 2d Dept 2010]; *LDE, P.C. v Encompass Ins.*, 29 Misc. 3d 130(A) [App Term 2d Dept 2010]).

However, with respect to an insurer's verification needs and requests, 11 NYCRR § 65-3.5 (b) states that:

"[s]ubsequent to the receipt of one or more of the completed verification forms, any additional verification required by the insurer to establish proof of claim shall be requested within 15 business days of receipt of the prescribed verification forms. Any requests by an insurer for additional verification need not be made [*6] on any prescribed 'or particular form. If a claim is received by an insurer at an address other than the proper claims processing office, the 15[-]business day period for requesting additional verification shall commence on the date the claim is received at the proper claims processing office. In such event, the date deemed to constitute receipt of claim at the proper claim processing office shall not exceed 10 business days after receipt at the incorrect office."

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11 NYCRR § 65-3.6 (b) states:

"Verification requests. At a minimum, if any requested verifications ha[ve] not been supplied to the insurer 30 calendar days after the original request, the insurer shall, within 10 calendar days, follow up with the party from whom the verification was requested, either by telephone call, properly documented in the file, or by mail. At the same time the insurer shall inform the applicant and such person's attorney of the reason(s) why the claim is delayed by identifying in writing the missing verification and the party from whom it was requested."

A motion for summary judgment "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR § 3212(b); *see Alvarez v Prospect Hosp.*, 68 N.Y.2d 320 (1986). The movant 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." *Winegrad v New York Univ. Med. Center*, 64 N.Y.2d 851, 853 (1985); *see, Zuckerman v City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant has made a prima facie showing, "the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Alvarez v Prospect Hosp.*, *supra* at 324. In determining a motion for summary judgment, the Court must view the evidence in the light most favorable to the nonmoving party. *See Stukas v. Streiter*, 83 A.D.3d 18 (2nd Dept. 2011).

An insurer must affirmatively establish that it complied with the strict no-fault insurance claim procedures set forth in 11 NYCRR 65-3.5 (*see generally PV Holding Corp. v Hank Ross Med., P.C.*, 188 AD3d 429 [1st Dept 2020]).

Here, plaintiff has failed to establish their prima facie entitlement to summary judgment, as a question of fact exists as to whether the plaintiff timely sent out the verification requests. Plaintiff's spreadsheet demonstrates that the Claim for Christopher Moran was received on 11/06/2023. The first verification request, however, was not sent out until 12/04/2023, which is seventeen (17) business days from the date of receipt. Additionally, plaintiff submits "Amended" verification requests that were not sent out until 12/21/2023, which included an additional address for defendant. Such evidence demonstrates a question of fact as to whether the first notice was mailed to the proper party, and the timeliness of said requests.

Since the plaintiff failed to establish their prima facie entitlement to judgment as a matter of law, their motion for summary judgment must be denied, regardless of the sufficiency of the

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plaintiffs' opposition papers (*Piedimonte v. Alvarenga-Benitez*, 226 A.D.3d 933, 934 [2d Dept 2024, citing *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]]).

Accordingly, it is hereby

ORDERED, that plaintiff's motion for summary judgment is DENIED in its entirety; and it is further

ORDERED, that all requests for relief not expressly addressed herein are DENIED.

This shall constitute the Decision and Order of the Court.

It is **SO ORDERED**.

Dated: April 13, 2026
Mineola, New York


HON. RHONDA E. FISCHER
A.J.S.C.

ENTERED

Apr 14 2026

NASSAU COUNTY
COUNTY CLERK'S OFFICE