

Privilege Underwriters Reciprocal Exch. v Sheena

2026 NY Slip Op 32032(U)

May 11, 2026

Supreme Court, New York County

Docket Number: Index No. 652417/2025

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

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PRIVILEGE UNDERWRITERS RECIPROCAL EXCHANGE,

Plaintiff,

- v -

ZACHARY SHEENA, GAIR, GAIR, CONASON, RUBINOWITZ, BLOOM, HERSHENHORN, STEIGMAN & MACKAUF, GARY FALKOWITZ, AS ADMINISTRATOR OF THE ESTATE OF E.F.; MITCHELL HASSENBEIN, AS ADMINISTRATOR OF THE ESTATE OF D.H., ETHAN SOLOP

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 37, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for DISMISSAL

The following e-filed documents, listed by NYSCEF document number (Motion 005) 38, 39, 40

were read on this motion to/for AMEND CAPTION/PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 006) 59, 60, 61, 65, 66, 68, 69, 70

were read on this motion to/for DISMISS

The following e-filed documents, listed by NYSCEF document number (Motion 007) 74, 75, 76, 78, 79, 80, 81, 82

were read on this motion to/for STAY

Motion Sequence Numbers 001, 005, 006 and 007 are consolidated for disposition. They are decided as described below.

Background

This action concerns a terrible, terrible tragedy in which a car driven by defendant Sheena was struck by a vehicle traveling the wrong way and operated by an intoxicated driver.

Defendants Sheena and Solop (a passenger in the car) were injured and two other passengers in the car tragically passed away (their estates are also defendants in this action).

This is the insurance dispute arising out of this accident. Plaintiff issued a personal excess liability policy to defendant Sheena's parents (NYSCEF Doc. No. 21). Plaintiff observes that Progressive Insurance Company issued a policy to the intoxicated driver and Geico issued a policy to Sheena's parents. Plaintiff's personal excess policy to Sheena's parents has SUM limitations of \$1 million which plaintiff claims is excess to the SUM limits to the policy issued by Geico.

Plaintiff brings this interpleader case for an order permitting it to deposit the limits of its excess policy, \$1 million, into Court and to discharge it from any further liability.

MS001

In Motion Sequence 001, defendant Sheena wants all the money. He contends that plaintiff's excess policy defines the insured as "you or a family member" and so defendant Sheena qualifies as an insured as a family member of the named insureds (his parents). Sheena insists that no coverage is provided to any of the passengers or anyone else and, therefore, coverage is only available to him. He wants a declaration directing plaintiff to tender the \$1 million (the policy limits) to him. He insists that New York law does not require umbrella policies providing SUM coverage to include passengers as opposed to the underlying policies, which do provide such coverage.

In partial opposition, plaintiff emphasizes that it does not oppose the portion of the motion that asserts that Sheena is the only potential insured under its policy. Plaintiff contends that the instant interpleader action is permissible because it has received competing claims for the \$1 million, including demands from Sheena, Sheena's former counsel (Gair, Gair, Conason,

Rubinowitz, Bloom, Hershenhorn, Steigman & Mackauf [hereinafter, “Gair”]), and from the passengers (and their families) in the vehicle.

Defendant Hassenbein contends that plaintiff should have just paid the policy limits to Sheena if it thought he was entitled to it. He adds that there is no evidence that Sheena suffered damages anywhere near \$1 million and it would constitute unjust enrichment for him to receive all of the proceeds at this stage of the case. Hassenbein argues that the other occupants should share in the proceeds in the interests of justice and question whether the policy language limits coverage to only defendant Sheena.

Defendant Falkowitz claims that there are clear issues of fact based on plaintiff’s decision to file this interpleader action in the first instance. He insists that this motion is premature as discovery has not yet occurred.

In reply, Sheena argues that the subject policy does not violate or offend public policy and that there is no basis to require that passengers get the \$1 million from plaintiff’s excess policy.

“In an action for a judgment declaring the parties' rights under an insurance policy, this Court must be guided by rules of contract interpretation because an insurance policy is a contract between the insurer and the insured. Contract interpretation or construction is usually a court function” (*Westchester Fire Ins. Co. v Schorsch*, 186 AD3d 132, 140, 129 NYS3d 67 [1st Dept 2020] [internal quotations and citations omitted]).

Here, the relevant personal excess policy states that “We will pay damages for bodily injury an insured is legally entitled to receive from the owner or operator of an uninsured or underinsured auto. We will only pay those damages in excess of the underlying insurance or the minimum required underlying limits, whichever is greater” (NYSCEF Doc. No. 21 at 8). The

policy defines insured as “you or a family member” (*id.* at 4). It defines a family member as “Family member means a person that lives in your household and is related to you by blood, marriage, or adoption” (*id.* at 3).

There is no question, therefore, that defendant Sheena (the driver of his parents’ car involved in the accident) qualifies as an insured under this excess policy. The question, then, is whether or not there is some basis for the other defendants to pursue a claim under the policy.

The Court finds that these other defendants have not raised an issue of fact that could compel the Court to deny defendant Sheena’s motion. To the extent that there is an issue regarding the amount of damages defendant Sheena might be able to recover (i.e., he might not have \$1 million in damages), that dispute is between Sheena and plaintiff. If plaintiff, the insurer, is willing to pay him the full amount, then that is plaintiff’s choice.

The other defendants’ insistence that there is some ambiguity about the word “use” in the policy is without merit. The policy states, in pertinent part, that “Insured also means any individual or other legal entity given permission by you or a family member to use a vehicle or watercraft covered by this policy with respect to their legal responsibility arising out of its use” (*id.* at 4). Courts considering this type of language have held that use means “some purposeful exercise of control is required by the person claiming to be covered under the policy” (*see Electric Ins. Co. v Boutelle*, 122 AD2d 332, 504 NYS2d 577 [3d Dept 1986]). This Court is unable to find that a passenger in a car (and particularly the two passengers who were not licensed to drive a vehicle) qualify as individuals given permission to *use* the car in question for purposes of coverage under an excess policy. That stretches any rational definition of the word “use” beyond all recognition.

The other defendants' references to fairness and justice are understandable given the horrific facts at issue in this case. But this Court is unable to rely upon those types of principles to reform a clear insurance contract that provided coverage to one of the injured victims of this tragic accident.

And, finally, as Sheena points out, there is no binding caselaw cited for the proposition that this type of insurance—personal excess coverage—is required to include passengers.¹

MS005

In this motion, defendant Falkowitz seeks leave to amend to assert a counterclaim against defendant Sheena for coverage under the subject policy.

For the reasons described above, this motion is denied as this does not state a viable claim. There is no basis to find that a passenger in a vehicle is entitled to coverage under the circumstances of this case—where the driver of the vehicle (defendant Sheena) is covered under a policy and was another victim of a drunk driver. Nor is there a basis to find that defendant Sheena was unjustly enriched by receiving coverage under a policy his parents procured.

MS006

In this motion, defendant Sheena seeks to dismiss the counterclaims asserted by defendants Falkowitz, Hassenbein, and Ethan Solop (the other passengers and their estates in the vehicle).

As noted above, because these other defendants do not have a viable claim for coverage under the policy, the Court is compelled to grant this motion.

¹ The Court overlooks any issues with the CPLR 2106 language included in the moving party's affirmation as there is no reason to dispute the moving party's attempt to comply and any issues were cured after the issue was highlighted. This Court stresses that this language was modified recently and will give some leeway as parties make changes to longstanding habits regarding language used to swear to an affirmation.

MS007

Defendant Sheena’s motion for a stay pending a decision in motion sequence 001 is moot.

It seems that this motion—MS001—was pending for quite some time before the prior judge who was assigned to this case. The Court apologizes for the delay.

Accordingly, it is hereby

ORDERED that defendant Sheena’s motion (MS001) to dismiss the interpleader complaint is granted to the extent that only defendant Sheena is entitled to coverage under plaintiff’s excess policy; and it is further

ORDERED that defendant Falkowitz’s motion (MS005) for leave to amend is denied; and it is further

ORDERED that defendant Sheena’s motion (MS006) to dismiss the counterclaims alleged by defendants Falkowitz, Hassenbein, and Ethan Solop is granted; and it is further

ORDERED that motion (MS007) for a stay is denied as moot; and it is further

DECLARED that only defendant Zachary Sheena is entitled to coverage as an insured under the subject excess policy issued by plaintiff to defendant Sheena’s parents; and it is further

ORDERED that plaintiff shall tender the \$1 million to defendant Sheena on or before June 12, 2026.

5/11/2026
DATE


ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>
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"/>
					<input type="checkbox"/>
					REFERENCE