

|                                                                                                                                                                                                                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>UGP Acupuncture, P.C. v Ameriprise Ins. Co.</b>                                                                                                                                                                             |
| 2026 NY Slip Op 32085(U)                                                                                                                                                                                                       |
| June 8, 2026                                                                                                                                                                                                                   |
| Civil Court of the City of New York, Kings County                                                                                                                                                                              |
| Docket Number: Index No. 752904/21                                                                                                                                                                                             |
| Judge: Sandra E. Roper                                                                                                                                                                                                         |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (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.                                                                                                                                                         |

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF KINGS PART 41 NFA FINAL

Index No. 752904/21  
Motion Cal. # 13+23 (reg) Motion Seq. #1/2

UGP ACUPUNCTURE, P.C.,

A/A/O CARLOS VERGARA

**DECISION AND ORDER**

Plaintiff(s),

Recitation, as required by CPLR §2219(a) of the papers considered in  
review of this Motion:

-against-

**Papers**

AMERIPRISE INS. CO.

D's motion for summary judgment.....1  
P's Cross-motion for SJ.....2

Defendant(s).

Upon the foregoing cited papers, the Decision/Order on Defendant's Motion For Summary Judgment and Plaintiff's Cross-Motion for Summary Judgment is as follows:

Plaintiff's motion is GRANTED to the extent that Plaintiff establishes its prima facie case in its entirety. Defendant's motion is DENIED.

Plaintiff, UGP Acupuncture, P.C., as assignee of Carlos Vergara, seeks recovery of assigned first-party no-fault benefits under a policy issued by Defendant, Ameriprise Insurance Company. Defendant moves for summary judgment based upon an alleged Examination Under Oath no-show defense and relies upon the affidavit of Tara Piontek in an effort to establish the mailing and timeliness of the alleged denials. Defendant's other papers and affidavits are also made on behalf on American Family Insurance Claims Services, Inc.

Defendant's EUO no-show defense rests upon alleged EUOs scheduled for February 15, 2019 and March 8, 2019. Defendant's own moving affidavit identifies the dates of service as December 5, 2018 through February 13, 2019, bill receipt dates in January and March 2019, and alleged denials dated March 13, 2019 and March 15, 2019.

The affidavit of Tara Piontek states that she is an employee of American Family Insurance Claims Services, Inc. ("AFICS"), a wholly owned subsidiary of American Family Insurance Mutual Holding Company. The affidavit further states that the subject policy was underwritten by American Family Connect Insurance Company f/k/a Ameriprise Insurance Company, and that, prior to February 1, 2021, the affiant was employed through American Family Connect Property and Casualty Insurance Company f/k/a IDS Property Casualty Insurance Company and American Family Connect Insurance Company f/k/a Ameriprise Insurance Company. The affidavit then states that, as of February 1, 2021, AFI MHC transferred her position to AFICS, but that her duties, responsibilities, and procedures remained the same.

The Court finds that the relevant mailing practices are the mailing practices that allegedly existed in 2019, when the bills were received and when the alleged denials were generated and mailed. The affidavit, however, was executed in 2022 and repeatedly relies upon the affiant's current employment with AFICS and her conclusion that the predecessor and successor entities used the same practices, processes, and procedures.

Plaintiff raised substantial issues concerning the February 2021 transition, including how the transition affected mailing procedures, claims records, personnel, systems, document retention, access to predecessor records, business practices, and the continuity of regular office mailing procedures from 2019 through the post-transition period. Those issues are material because Defendant seeks to prove the mailing of 2019 denials through an affidavit that repeatedly references a later corporate and employment transition.

Defendant did not submit documentary proof establishing the transition, the transfer or incorporation of records, the continuity of mailing procedures, the identity and role of the personnel responsible for mailing in 2019, the relevant 2019 mailing manuals or procedures, mailing logs, certificates of mailing, claims-system conversion records, or any other competent evidence addressing the gaps raised by Plaintiff.

The affidavit's repeated statement that the same practices, processes, and procedures were used by the predecessor entities and are now used by AFICS is conclusory under the circumstances presented. The use of the collective term "AFICS" for multiple related entities does not establish, without more, that each entity maintained identical mailing procedures, that the predecessor's records were properly incorporated into AFICS's business records, or that the affiant laid a sufficient foundation for the specific 2019 mailings at issue.

Even assuming, for purposes of argument only, that the Court has jurisdiction over or may consider the role of a successor entity, Defendant did not move to amend, substitute, or otherwise properly establish the successor entity's role in this action in a manner that cures the evidentiary defects in Defendant's proof. Jurisdiction over, or reference to, a successor entity does not automatically establish personal knowledge, business-record admissibility, corporate continuity, or a proper foundation for predecessor mailing procedures.

Accordingly, Defendant failed to establish, in admissible form, the proper and timely mailing of the denials upon which its EUO no-show defense depends. Defendant has therefore failed to establish entitlement to summary judgment based upon Plaintiff's alleged failure to appear for EUOs.

Plaintiff's motion is granted to the extent that Plaintiff established its prima facie case as to the timely and proper mailing of the bills to Defendant. Defendant's motion for summary judgment based upon the EUO no-show defense is denied. Defendant is not awarded dismissal, summary judgment, or any affirmative relief based upon that defense.

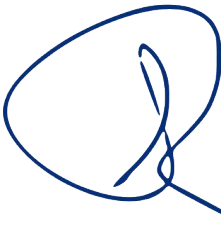
Defendant's remaining prima facie issues and defenses, to the extent not disposed of herein and to the extent properly preserved and supported by admissible proof, shall proceed to trial.

This constitutes the decision and order of the Court.

*“The undersigned attorneys certify that upon due diligence none of their firm’s papers as pertains to case law associated with this case or this motion, and upon information and belief, none of the associated papers that were drafted post January 1, 2022 used generative artificial intelligence programs.”*

Counsel for Plaintiff – Printed Name and Initials: Richard Rozhik, Esq. / RR

Counsel for Defendant – Printed Name and Initials: Edwin Fernandez, Esq./ EF



HON. SANDRA E. ROPER

June 8, 2026

DATE

CHECK ONE:

MOTION SEQ. #1

MOTIONS EQ #2:

CHECK IF APPROPRIATE:

NOTES

|                          |                            |                                            |                                     |                       |
|--------------------------|----------------------------|--------------------------------------------|-------------------------------------|-----------------------|
| <input type="checkbox"/> | CASE DISPOSED              | <input checked="" type="checkbox"/>        | NON-FINAL DISPOSITION               |                       |
| <input type="checkbox"/> | GRANTED                    | <input checked="" type="checkbox"/> DENIED | <input type="checkbox"/>            | GRANTED IN PART       |
| <input type="checkbox"/> |                            |                                            | <input checked="" type="checkbox"/> | GRANTED IN PART       |
| <input type="checkbox"/> | SETTLE ORDER               |                                            | <input type="checkbox"/>            | SUBMIT ORDER          |
| <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN |                                            | <input type="checkbox"/>            | FIDUCIARY APPOINTMENT |
|                          |                            |                                            | <input type="checkbox"/>            | OTHER                 |
|                          |                            |                                            | <input type="checkbox"/>            | STAY CASE             |
|                          |                            |                                            | <input type="checkbox"/>            | REFERENCE             |

ENETERED - Kings Civil Court

6/9/2026, 4:42:57 PM