Adirondack Ins. Exch. v Wang

2026 NY Slip Op 32119(U)

April 30, 2026

Supreme Court, New York County

Docket Number: Index No. 650340/2023

Judge: Gerald Lebovits

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **07**

Justice

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INDEX NO. 650340/2023

MOTION SEQ. NO. 002

ADIRONDACK INSURANCE EXCHANGE,

Plaintiff,

- v -

ALAN WANG, WENDY WANG, MICHAEL BATHER, THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, and NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION,

Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77

were read on this motion for SUMMARY JUDGMENT.

Hurwitz & Fine, P.C. , Buffalo, NY (Ryan P. O'Shea, Esq. of counsel), for plaintiff.
Law Offices of Jonathan A. Dachs, New York, NY (Jonathan A. Dachs of counsel), for defendants Alan Wang and Wendy Wang.
Stevens & Traub, Elmsford, NY (Peter P. Traub of counsel), for defendant Michael Bather.
No appearance for the New York City defendants.

Gerald Lebovits, J.:

This is an insurance-coverage action. Plaintiff, Adirondack Insurance Exchange, issued a homeowners'-insurance policy to defendants Alan Wang and Wendy Wang. During the policy period, Alan Wang was involved in a collision with a cyclist (defendant Michael Bather) on the Brooklyn Greenway bike path while Wang was riding a E-scooter.

Bather then brought a personal-injury action (the underlying action) against Mr. Wang and the New York City defendants. (*See Bather v City of New York*, Index No. 531800/2022 [Sup Ct, Queens County].) Four days after being notified of the underlying action, Adirondack sent a letter to the Wangs in which it disclaimed coverage but agreed to defend Mr. Wang in the underlying action pending resolution of the validity of Adirondack's disclaimer. (*See* NYSCEF No. 34 [letter].)

Adirondack then brought this action for declaratory relief. Adirondack is seeking a declaratory judgment that no coverage exists under the policy related to the collision at issue in the underlying action; that Adirondack does not owe defendants duty to defend or to indemnify, and that Adirondack may therefore withdraw from Mr. Wang's defense in the underlying action.

Adirondack now moves for summary judgment under CPLR 3212 on its declaratory-judgment claims. The motion is granted.

DISCUSSION

I. Whether the Adirondack Policy's Exclusion for "Motor Vehicle Liability" Ousts Coverage for the Underlying Collision

In its disclaimer letter and in this action, Adirondack relies on the effect of a coverage exclusion in the Wangs' policy for bodily injuries arising out of the use of a motor vehicle (with certain specified exceptions). (*See* NYSCEF No. 46 at 3-5, 12-15 [mem. of law].) Policy exclusions must be "stated in clear and unmistakable language," with any ambiguity to be resolved in favor of coverage (*Seaboard Sur. Co. v Gillette Co.*, 64 NY2d 304, 311 [1984].) Adirondack contends that it can meet this demanding standard as a matter of law. This court agrees.

For purposes of the motor-vehicle-liability exclusion, the Adirondack policy defines "motor vehicle" as including "[a] self-propelled land or amphibious vehicle." (*See* NYSCEF No. 32 at 18 [defining "motor vehicle liability"], 19 [defining "motor vehicle"], 30 [excluding coverage for "motor vehicle liability"].) It is undisputed that the scooter involved in the accident is a self-propelled electric scooter. The scooter therefore unambiguously constitutes a "motor vehicle" within the meaning of the policy exclusion.

Defendants contend that that the exclusion is inapplicable here, or at least that Adirondack has not shown its applicability as a matter of law. In particular, defendants emphasize that the Vehicle & Traffic Law (VTL) was amended in 2020 to exclude E-scooters, like the one being ridden by Mr. Wang when he collided with Bather, from the statutory definition of "motor vehicle." But "the fact that the Vehicle and Traffic Law may define 'motor vehicle' differently is of no moment inasmuch as the contract itself provides a definition of that term." (*Fornino v New York Cent. Mut. Fire Ins. Co.*, 218 AD3d 1192, 1195 [4th Dept 2023], citing *City of Albany v Standard Acc. Ins. Co.*, 7 NY2d 422, 430 [1960].) That the policy defines "motor vehicle" differently from the VTL does not make the policy's (broad) definition ambiguous. Nor do defendants provide authority for the proposition that an insurance policy's definition of a material term should be disregarded in favor of a different statutory definition, at least absent an argument that the policy's definition is contrary to public policy.

II. Whether Adirondack Timely Disclaimed Coverage

It is undisputed that Adirondack received notice of the underlying action on November 14, 2022; and that it disclaimed coverage by letter dated November 18, 2022. Defendants argue that this disclaimer letter nonetheless did not rely on the motor-vehicle exclusion, as needed for Adirondack to be able to rely in this action on the exclusion. This court disagrees.

Adirondack's letter quotes the motor-vehicle exclusion and describes the facts making that exclusion applicable—*i.e.*, that the underlying action involves claims for bodily injury arising from a collision involving an E-scooter that is a "motor vehicle" within the meaning of the policy. (*See* NYSCEF No. 34 at 5-6.) The letter also identifies the facts that foreclose applicability of a possible policy exception to this exclusion, for motor vehicles that are "designed for recreational use off public roads"—namely that the collision did not "take[] place on an 'insured location'" within the meaning of the policy. (*Id.* at 6-7.) Because the disclaimer letter "identified the applicable policy exclusion and set forth the factual basis for the insurer's position that the claim fell within such exclusion," the letter "was sufficiently specific to render such notice timely." (*Massot v Utica First Ins. Co.*, 36 AD3d 499, 499 [1st Dept 2007].)

III. Whether the Underlying Collision Comes Within the Policy's "Designed to Assist the Handicapped" Exception to the Motor-Vehicle Exclusion

The Adirondack policy's motor-vehicle-liability exclusion is subject to an exception if the motor vehicle at issue is "[d]esigned to assist the handicapped" and, at the time of the occurrence at issue, is "[b]eing used to assist an handicapped person." (NYSCEF No. 32 at 30.) Defendants argue that a material dispute of fact exists about applicability of this exception. This argument is unpersuasive.[1]

Defendants submit evidence, including detailed deposition testimony, that Mr. Wang used the scooter as an assistive transportation device, because he suffers from a disability (functional deafness) that makes it difficult for him to commute to and from work on public transportation. This evidence might be sufficient to establish a factual dispute about whether the scooter was "[b]eing used to assist a handicapped person" at the time of the underlying collision. Defendants have not, however, identified evidence that might give rise to a factual dispute about whether the scooter was "*designed* to assist the handicapped," as required to come within this policy exception.

Defendant Bather also argues that Adirondack's disclaimer letter is insufficient because it failed to rule out applicability of the designed-to-assist-the-handicapped exception to the motor-vehicle-liability exclusion. But Bather does not identify authority for the proposition that a disclaimer notice is required under CPLR 3420 (d) not only to identify an applicable policy exclusion, but also to rule out potential policy exceptions to that exclusion.

It is true that in this case Adirondack's disclaimer letter did identify—and rule out—one potentially applicable policy exception, for motor vehicles "'[d]esigned for recreational use off public roads.'" (NYSCEF No. 34 at 6-7, quoting NYSCEF No. 32 at 30.) But that is easily explained by the fact that the notice provided to Adirondack would have put before it facts suggesting the potential applicability of that exception. By contrast, defendants do not provide evidence that Adirondack was on notice at the time it issued its disclaimer letter (or when filing its complaint here) of the potential applicability of the "[d]esigned to assist the handicapped" exception in light of Mr. Wang's deafness.

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[1] In contesting this issue, Adirondack attaches new exhibits on reply. (*See* NYSCEF Nos. 73, 74.) The parties have exchanged letters about whether those exhibits are properly before this court. (*See* NYSCEF Nos. 75-77.) The court has not reviewed or considered the exhibits in resolving the motion.

Under CPLR 3420 (d), an insurer may not "delay disclaiming on a ground fully known to it until it has completed its investigation (however diligently conducted) into different, independent grounds for rejecting the claim." (*George Campbell Painting v National Union Fire Ins. Co. of Pittsburgh, PA*, 92 AD3d 104, 111 [1st Dept 2012].) The record on this motion reflects that Adirondack was immediately aware of the facts supporting applicability of a policy exclusion—and was not aware of facts that might bring the underlying collision within an exception to that exclusion. It would make little sense to say that Adirondack should be barred from relying here on that exclusion because it did not delay its disclaimer to investigate an exclusion exception that it had no reason to think applied. And defendants do not show that they were prejudiced by the absence from the disclaimer letter of a discussion of the "[d]esigned to assist the handicapped" exception to the motor-vehicle-liability exclusion. (*Cf. Guberman v William Penn Life Ins. Co. of N.Y.*, 146 AD2d 8, 12 [2d Dept 2012] [holding, outside the CPLR 3420 [d] context, that as a matter of common-law estoppel, "an insurer's specification of one of several available grounds for disclaimer" will not "operate to bar the later assertion of the other grounds for disclaimer where the insured cannot claim to have suffered any degree of prejudice"].)

Accordingly, it is

ORDERED that plaintiff Adirondack Insurance Exchange's motion for summary judgment in its favor is granted, no costs; and it is further

ORDERED, ADJUDGED, and DECLARED that no coverage exists under the Adirondack policy issued to defendant Alan Wang for the underlying action (Index No. No. 531800/2022 [Sup Ct, Queens County]); and it is further

ORDERED, ADJUDGED, and DECLARED that Adirondack Insurance Exchange has no duty to defend or to indemnify defendants in that underlying action; and it is further

ORDERED, ADJUDGED, and DECLARED that Adirondack Insurance Exchange may withdraw from the defense that it is currently providing to Alan Wang in that underlying action; and it is further

ORDERED that Adirondack serve a copy of this order with notice of its entry on all parties; and on the office of the County Clerk on the office of the County Clerk (using the NYSCEF document type "Notice to the County Clerk - CPLR § 8019 (c)"), which shall enter judgment accordingly.

4/30/2026
DATE

HON. GERALD LEBOVITS
J.S.C.

CHECK ONE:	X CASE DISPOSED		NON-FINAL DISPOSITION		
	X GRANTED	DENIED	GRANTED IN PART		OTHER
APPLICATION:	SETTLE ORDER		SUBMIT ORDER		
CHECK IF APPROPRIATE:	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT		REFERENCE