

**General Ins. v Leandre**

2024 NY Slip Op 31318(U)

February 6, 2024

Supreme Court, Bronx County

Docket Number: Index No. 28882/2020E

Judge: Elizabeth A. Taylor

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NEW YORK SUPREME COURT – COUNTY OF BRONX

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 2

-----X

THE GENERAL INSURANCE, et al.,

Plaintiff(s),

Index No. 28882/2020E

Hon. ELIZABETH A. TAYLOR  
Justice of the Supreme Court

-against-

KERVENS LEANDRE, et al.,

Defendant(s).

-----X

The following papers numbered 351 to 355 were read on these motions (Seq. No. 5) for DISMISS

| Sequence No.  | NYSCEF Doc. Nos. |
|---|------------------|
| Notice of Motion – Exhibits and Affidavits Annexed  | 351-352          |
| Cross Motion – Exhibits and Affidavits Annexed      |                  |
| Answering Affidavit and Exhibits, Memorandum of Law | 354              |
| Reply Affidavit                                     | 355              |

This motion is decided in accordance with the memorandum decision accompanying memorandum decision.

Dated: FEB 06 2024

Hon.   
ELIZABETH A. TAYLOR, J.S.C.

1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY  CASE STILL ACTIVE
2. MOTION IS.....  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE.....  SETTLE ORDER  SUBMIT ORDER  SCHEDULE APPEARANCE
- FIDUCIARY APPOINTMENT  REFEREE APPOINTMENT

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
THE GENERAL INSURANCE, PERMANENT -  
GENERAL ASSURANCE CORPORATION,  
PERMANENT GENERAL ASSURANCE  
CORPORATION OF OHIO, THE GENERAL  
AUTOMOBILE INSURANCE COMPANY, INC,  
*Plaintiffs,*

DECISION and ORDER  
Index No. 28882/2020E

-against-

KERVENS LEANDRE, WENSKA JEAN,  
STANLEY SOLAGES, BELINDA COFER and  
JANIECE BAZILE,

(collectively the "Policy Defendants")

-and-

HOLENS COLIMON, JEAN REYNOLDSON,  
ASAHIAH HUNTLEY, JONATHAN SEVERE,  
ALTEESE JEAN, JEREMIAH JONES, JAQUAN  
HOOKS, NAHIL LIVINGSTON, RICARD  
BAPTISTE, JIMMY BAPTISTE,  
CHEVON HOLLINS and KENDARI WELCH,

(collectively the "Staged Loss Defendants")

-and-

12 MERIDIANS ACUPUNCTURE P.C., 3 STAR  
ACUPUNCTURE, PC, AAAMG LEASING CORP,  
ACCU REFERENCE MEDICAL LAB, ACHIEVE  
PSYCHOLOGICAL SERVICES PC, ADVANTAGE  
RADIOLOGY PC, AFFINITY RX, AGYAL  
PHYSICAL THERAPY PLLC, ALL FORWARD  
CHIROPRACTIC PC, ALLIED CARE PT, PC,  
ALTAI CORP. DBA GET READY MEDICAL  
SUPPLY, AMBULATORY SURGICAL  
CENTER OF ENGLEWOOD, APEX MEDICAL,  
ARISTA PHYSICAL THERAPY PC, ASC OF  
ROCKAWAY BEACH, ASCE ANESTHESIA PC,  
ATLANTIC DIAGNOSTIC LLC, ATLAS  
PHARMACY LLC, AUTORX LLC, A-Z HOME  
CARE, INC. D/B/A AZ CARE RENT INC., BAY

RIDGE ORTHOPEDIC ASSOCIATES, BCJ  
MEDICAL PC, BENESSERE SERVICE INC,  
BETTER HANDS PHYSICAL  
THERAPY PC, BLISS DRUGS, BP DYNAMIC  
REHAB PT. PC, BRIDGES PSYCHOLOGICAL  
SERVICES PC, BURKE PHYSICAL THERAPY  
PC, CARESOFT LEASING CORP.,  
CITIMEDICAL SERVICES, PC, CITY WIDE  
HEALTH FACILITY, INC, CLASS POINT  
ACUPUNCTURE, PLLC, CMA PSYCHOLOGY,  
P.C., COMFORT CARE RADIOLOGY PC,  
COMPLETE NEUROPSYCHOLOGY PC,  
COMPLETE WELLNESS CHIROPRACTIC, P.C.,  
COMPREHENSIVE MEDICAL ASSIST, P.C.,  
COMPREHENSIVE PSYCHOLOGICAL P.C.,  
CONTEMPORARY ORTHOPEDICS, CPM MED  
SUPPLY, INC., CVS RX INC, DAVID W HANSEN,  
MD, DELPHI CHIROPRACTIC PC, DR. KAREN A  
RISSE, DR. M CHIROPRACTIC, P.C., ECLIPSE  
MEDICAL IMAGING PC, ELITE DRUGS &  
SURGICAL, ELMWOOD PARK MEDICAL  
GROUP PC, ENGLEWOOD ORTHOPEDICS  
GROUP PC, ENS MEDICAL P.C., EXCELL  
CLINICAL LAB, INC., EXPRESS MOBILE  
DIAGNOSTIC SERVICES INC., EZ ORTHO  
SUPPLY INC., EZ SUPPLY DISTRIBUTOR INC,  
FLORID LEISURE ACUPUNCTURE  
P.C., FREE STEPS PHYSICAL THERAPY PC,  
FYZIO PT PLLC, GARA MEDICAL CARE PC, GM  
MEDICAL SERVICES PC, GRAND MEDICAL  
SUPPLY CORP, HAMZA PHYSICAL THERAPY  
PLL, HAZAQ PSYCHOLOGICAL SERVICES,  
P.C., HEALTH CHOICE PHARMACY INC,  
HEALTH EAST MEDICAL ALLIANCE,  
HEALTHMAX ACUPUNCTURE PC,  
HEALTHWISE MEDICAL ASSOCIATES P.C.,  
HEALTHY CHIROPRACTIC PC, HLB MEDICAL  
PC, HORIZON ORTHO SUPPLY, ICONIC  
WELLNESS SURGICAL SERVICES, LLC, IGOR  
MAYZENBERG, L.A.C, INEW REHAB  
PHYSICAL THERAPY PC, INJE PHYSICAL  
THERAPY PC, INSTA DRUGS INC., JAMAICA  
EMERGENCY ROOM, JAMAICA HOSPITAL,  
JAMES MIHALCIK, MD, JOHN LYONS MD,  
JOSEPH A RAI A MD PC, JULES F PARISIEN,  
MD, LEVMIC INC., LONGEVITY MEDICAL

SUPPLY, INC., LR MEDICAL PLLC, LZ  
MEDICAL DIAGNOSTIC PC, MAJESTIC  
MEDICAL IMAGING PC, MANDATE  
CHIROPRACTIC PC, MARINA GADABORSHEV  
D.C., MASOOD CHIROPRACTIC DIAGNOSTIC  
PC, MAZ SUPPLY, INC, MEDICAL SUPPLY  
DEPOT GROUP CORP, METRO PAIN  
SPECIALISTS PC, METROPOLITAN MEDICAL  
AND SURGICAL, P.C., MIN PHYSICAL  
THERAPY PC, MYEHM RX INC, MZY  
ACUPUNCTURE PC, NARRA CHIROPRACTIC,  
P.C., NEMAAN GHUMAN, DPM, NEW  
YORK INJURY CHIROPRACTIC REHAB PC,  
NEW YORK SPINE INSTITUTE, NEXRAY  
MEDICAL IMAGING PC,  
NOVA MEDICAL DIAGNOSTIC, P.C., NY  
CHIROPRACTIC REHABILITATION PC, NYC  
CARE PT, PC, NYEEQASC, LLC, ORACLE  
CHIROPRACTIC PC, PERFORMANCE  
CHIROPRACTIC, PC, PHOENIX  
MEDICAL SERVICES PC, PINOY  
CHIROPRACTIC, PC, PREMIER ANESTHESIA  
ASSOCIATES PA, PROTECHMED INC, PV  
SUPPLY INC, QUALITY HEALTH FAMILY  
MEDICAL CARE, QUEENS ARTHROSCOPY &  
SPORTS MEDICINE, QUEENS BOULEVARD  
CHIROPRACTIC, P.C., RADCITI IMAGING  
PC, RAF SPORTS CHIROPRACTIC, P.C., RAINE  
M PESIDAS PHYSICAL THERAPY PC, RALPH  
MEDICAL DIAGNOSTICS, P.C., REHAB TIME PT  
PC, RELIABLE CPM SURGICAL SUPPLIES, INC,  
RELIABLE ONE SERVICES INC, RENAN  
MACIAS MD, RGW CHIROPRACTIC  
DIAGNOSTICS P.C., RITE SCRIPT RX  
INC. D/B/A RITE SCRIPT PHARMACY, SCOB,  
LLC, SEDATION VACATION PERIOPERATIVE  
MEDICINE PLLC, SINGH PT PLLC, SP ONE  
SERVICES INC, SPINE HEALTH  
ORTHOPAEDICS PC AKA SPINE HEALTH  
ORTHOPEDIC P.C., STAND-UP MRI OF  
BENSONHURST PC, SUDHA PATEL, M.D. PLLC,  
SUESSERMAN CHIROPRACTIC PC,  
SUFFICIENT CHIROPRACTIC CARE PLLC,  
SUNY DOWNSTATE, SUPPORTIVE  
PRODUCTS CORP, SW CHIROPRACTIC CARE  
PC, TIME TO CARE PHARMACY INC,

TITAN PHARMACY LEVRON INC, TOPLAB,  
TRAPEZIUS DIAGNOSTIC CHIROPRACTIC PC,  
TREND MED INC, TROMBMED NY, INC. ,  
U.S. MED SUPPLY CORP., UNIVERSITY  
HOSPITAL OF BROOKLYN, VESNA MEDICAL  
PC, VITAL CHIROPRACTIC, VVX INC,  
WELCOME PHYSICAL THERAPY PC,  
WELLNESS DIAGNOSTIC IMAGING P.C., WFN  
ACUPUNCTURE PC, WJ WELLNESS  
ACUPUNCTURE, PC, YD MEDICAL  
SERVICES PC, YK SUPPLY INC.,

(collectively the “Provider Defendants”)

*Defendants.*

-----X  
**HON. ELIZABETH A. TAYLOR**

Upon the foregoing papers, the defendants 3 Star Acupuncture, P.C., Agyal Physical Therapy PLLC, Bridges Psychological Services, P.C., Burke Physical Therapy, P.C., Class Point Acupuncture, PLLC, CMA Psychology, P.C., Comfort Care Radiology, P.C., Complete Neuropsychology, P.C., Free Steps Physical Therapy, P.C., Healthwise Medical Associates, P.C., James Mihalchik, M.D., Jules F. Parisien, M.D., Longevity Medical Supply, Inc., LR Medical, PLLC, Medical Supply Depot Group Corp., Metro Pain Specialists, P.C., Masood Chiropractic Diagnostic, P.C., Narra Chiropractic, P.C., Nova Medical Diagnostic, P.C., NYEEQASC, LLC, Singh P.T., PLLC, and Trapezius Diagnostic Chiropractic, P.C. (the “Rybak Defendants”), move for an order pursuant to CPLR 3211(a)(7), dismissing the complaint and each of the claims and/or causes of action with prejudice, and/or to sever each of the claims and/or causes of action in this matter pursuant to CPLR 603, and/or such other and further relief as may be just, proper, and equitable.

By separate motion, the defendant Iconic Wellness Surgical Services, LLC (“Iconic”) moves for an order (1) dismissing the complaint pursuant to CPLR 3211(a)(7), and/or severing

each of the claims and/or causes of action in this matter pursuant to CPLR 603, or alternatively (2) compelling the plaintiffs to respond to Iconic's discovery demands, (3) granting Iconic such other and further relief as this Court deems just and proper.

The plaintiffs The General Insurance, Permanent General Assurance Corporation, Permanent General Assurance Corporation of Ohio, and The General Automobile Insurance Company, Inc. (collectively, "Plaintiffs") oppose both motions.

In the interest of judicial economy, the two motions are consolidated for disposition.

I. Background

Plaintiffs' complaint seeks to "terminate a massive, ongoing fraudulent scheme perpetrated against [Plaintiffs], whereby individuals and their associates obtain automobile insurance policies from [Plaintiffs]... typically through false and fraudulent policy applications." These policyholders and their associates then "stage automobile 'accidents' involving the vehicles insured under" those insurance policies. Then, "fraudulent claims for personal injury protection ("No-Fault") benefits, underinsured/uninsured motorist benefits and liability coverage are ... submitted in connection with these staged 'accidents' that have each been intentionally caused." The complaint alleges that these fraudulent policies and claims are interrelated, there are "common ringleaders that permeate" the claims, and the claimants "are willfully causing these 'accidents' in an attempt to commit insurance fraud." In addition, the alleged victims of these accidents failed to respond to Plaintiffs' requests for additional verification of their claims including examinations under oath as required by the policies, No-Fault regulations, and Insurance Law.

Plaintiffs thus commenced this declaratory judgment action pursuant to CPLR 3001, declaring that (1) the subject accidents were staged and Plaintiffs are not obligated to pay any

first-party benefits on the subject policies to the various healthcare providers or named insureds and/or claimants, nor are Plaintiffs obligated to defendant or indemnify the named insureds or operators/occupants of the insured vehicles for claims made against them seeking damages and payment under the subject policies, (2) the subject policies were fraudulently procured, and Plaintiffs therefore are not obligated to pay any claims arising from the those policies, or to defend or indemnify the named insureds or individuals who operated or occupied the insured vehicles for claims that are made against them seeking damages and payment under the subject policies, and (3) those claimants who seek benefits from but failed to respond to Plaintiffs' request for additional verification, including examinations under oath and/or independent medical examinations, materially breached a condition to coverage which relieves Plaintiffs from the obligation to pay those claims.

Rybak Defendants now move to dismiss Plaintiffs' complaint pursuant to CPLR 3211(a)(7), or alternatively for an order of severance pursuant to CPLR 603. Iconic moves for the same relief, largely adopting and incorporating the arguments made by Rybak Defendants. Iconic alternatively seeks an order compelling Plaintiffs to respond to their discovery demands.

## II. Applicable Law and Analysis

### (1) Motion to Dismiss/Sever

Rybak Defendants and Iconic (collectively referred to as "Defendants") initially argue that the Court is required to dismiss those claims that the provider defendants filed against Plaintiffs in Civil Court, Kings County, prior to the commencement of this action.

This branch of the motion is denied. It is true that a court may decline to hear a matter "if there are other adequate remedies available, and it must dismiss the action if there is already pending between the parties another action in which all the issues can be determined" (*Matter of*



*Morgenthau v. Erlbaum*, 59 N.Y.2d 143, 148 [1983]). The Court of Appeals explained, however, “[t]he mere existence of other adequate remedies ... does not require dismissal: ‘We have never gone so far as to hold that, where there exists a genuine controversy requiring a judicial determination, the Supreme Court is bound, solely for the reason that another remedy is available, to refuse to exercise the power conferred by (the predecessor statutes to CPLR 3001)’” (*id.*, quoting *Woodlard v. Schaffer Stores Co.*, 272 N.Y. 304, 311 [1936]). Plaintiffs here seek a declaratory judgment on the issue of the defendants’ eligibility to recover No-Fault benefits under the relevant insurance policies, and they name all medical providers who were assigned such benefits by alleged accident victims. This declaratory relief cannot be granted by the Civil Court, therefore dismissal of claims relating to the previously filed Civil Court proceedings is not warranted (*General Insurance v. Piquion*, 211 A.D.3d 634, 635 [1<sup>st</sup> Dept. 2022], citing *State Farm Fire & Casualty Co. v. Jewsbury*, 169 A.D.3d 949, 950-951 [2d Dept. 2019]).

Defendants next contend that the complaint fails to state a cause of action because it improperly consolidates unrelated claims without identifying any evidence showing that all the claims were part of a common scheme or purpose. Defendants further allege that the complaint fails to plead fraud with particularity as required by CPLR 3016(a).

This branch of the motion is also denied. The Court’s role on a motion to dismiss pursuant to CPLR 3211(a)(7) is limited to determining whether the complaint states a cause of action (*Frank v. DaimlerChrysler Corp.*, 292 AD2d 118 [1st Dept. 2002]). In other words, the determination is not whether the party has artfully drafted the pleading, but whether deeming the pleading to allege whatever can be reasonably implied from its statements, a cause of action can be sustained (*see Stendig, Inc. v. Thom Rock Realty Co.*, 163 AD2d 46 [1st Dept. 1990]; *Leviton Manufacturing Co., Inc. v. Blumberg*, 242 AD2d 205 [1st Dept. 1997]). When considering such a

motion, the pleadings must be liberally construed (CPLR 3026), the court must “accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit into any cognizable legal theory” (*Leon v. Martinez*, 84 NY2d 83, 87-88 [1994]). Importantly, “in the context of a motion to dismiss, the Court does not assess the relative merits of the complaint’s allegations against defendant’s contrary assertions or to determine whether or not plaintiffs can produce evidence to support their claims” (*M.H.B. v. E.C.F.S.*, 177 A.D.3d 479, 480 [1<sup>st</sup> Dept. 2019]). The motion should be denied if, from the pleading’s four corners, factual allegations are discerned which taken together manifest any cause of action cognizable at law (*McGill v. Parker*, 179 AD2d 98 [1<sup>st</sup> Dept. 1992]). Plaintiff need only sufficiently apprise the defendant of the “transactions, occurrences, or series of transactions” that form the basis of the complaint (*High Definition MRI, P.C. v. Travelers Companies, Inc.*, 137 A.D.3d 602, 603 [1<sup>st</sup> Dept. 2016], citing CPLR 3013).

“On a motion to dismiss a declaratory judgment action for failure to state a cause of action, ‘the only question is whether a proper case is presented for invoking the jurisdiction of the court to make a declaratory judgment, and not whether the plaintiff is entitled to a declaration favorable to him’” (*Piquion*, 211 A.D.3d at 635, quoting *Law Research Serv. v. Honeywell, Inc.*, 31 A.D.2d 900, 901 [1<sup>st</sup> Dept. 1969]). Plaintiffs seek a judgment declaring that they are not obligated to pay benefits under the subject policies because the accidents were staged, the policies were fraudulently obtained, or the assignors failed to comply with certain condition precedents to coverage. These allegations “provide adequate notice of the transactions and occurrences intended to be proved” and state a cause of action for declaratory relief (*High Definition MRI, P.C. v. Liberty Mut. Holding Co., Inc.*, 148 A.D.3d 470, 470 [1<sup>st</sup> Dept. 2017]);

*Piquion*, 211 A.D.3d at 635; CPLR 3013). Contrary to Defendants' contentions, Plaintiffs "need not allege a proper claim for fraud in the complaint" (*Piquion*, at 635).

Defendants' assertion that this action improperly seeks an advisory opinion is unavailing. As held under similar circumstances, Plaintiffs' "request for a declaration regarding the eligibility of defendants to recover no-fault benefits under the relevant policies amounts to a justiciable controversy sufficient to render declaratory judgment" (*Piquion*, citing *State Farm Mut. Auto. Ins. Co. v. Anikeyeva*, 89 A.D.3d 1009, 1010-1011 [2d Dept. 2011]).

Finally, Defendants argue that the Court must sever each claim arising from the subject accidents since each accident involves different dates, witnesses, policyholders, and assignors. CPLR 603 provides, "[i]n furtherance of convenience or to avoid prejudice the court may order a severance of claims, or may order a separate trial of any claim, or of any separate issue." Factors to consider in deciding whether to sever claims include whether they share common questions of law or fact (*Marbilla LLC v. 143/145 Lexington LLC*, 116 A.D.3d 544, 544 [1<sup>st</sup> Dept. 2014]; *Erbach Fin. Corp. v. Royal Bank of Canada*, 203 A.D.2d 80 [1<sup>st</sup> Dept. 1994]), the potential prejudice to a party that would result from severance (*Bender v. Underwood*, 93 A.D.2d 747, 748 [1<sup>st</sup> Dept. 1983]), and the possibility of juror confusion (*id.*) or inconsistent verdicts (*Williams v. Property Services, LLC*, 6 A.D.3d 255 [1<sup>st</sup> Dept. 2004]). "Although it is within a trial court's discretion to grant a severance, this discretion should be exercised sparingly" (*Shanley v. Callahan Indus.*, 54 N.Y.2d 52, 57 [1981]). "Where complex issues are intertwined, albeit in technically different actions, it would be better not to fragment trials, but to facilitate one complete and comprehensive hearing and determine all the issues involved between the parties at the same time" (*id.*).

In *Piquion* (supra), the First Department found under substantially similar circumstances that the motion court providently exercised its discretion in declining to sever the plaintiff-insurer's claims into separate causes of action (211 A.D.3d at 635). The Court held: "...after consideration of all relevant factors, including the potential prejudice that would be suffered by plaintiffs in having to litigate 32 separate actions involving many of the same parties and witnesses, the court properly declined to sever the claims" (*id.*, citing *Hempstead Gen. Hosp. v. Liberty Mut. Ins. Co.*, 134 A.D.2d 569, 569-570 [2d Dept. 1987]; *cf. Radiology Resource Network, P.C. v. Fireman's Fund Ins. Co.*, 12 A.D.3d 185 [1<sup>st</sup> Dept. 2004]).

In this case, like in *Piquion*, the plaintiff-insurers seek a declaration that they are not obligated to pay first-party benefits with respect to 23 claims<sup>1</sup> arising out of 26 accidents because those accidents were staged, the subject policies were procured through fraud, or because the claimants failed to comply with conditions precedent to coverage. Plaintiffs would be prejudiced by severance of those claims because they allege to be victims of a "wide-ranging scheme" involving multiple accidents that occurred over a period of time. Plaintiffs wish to demonstrate to the fact-finder at trial that these accidents had common links to one another and were not genuine. Similarly, Plaintiffs seek to demonstrate that insurance policies were fraudulently procured by showing links between false addresses used to procure them, and how the policy applications were submitted – using common phone numbers, internet-protocol addresses, and email addresses. Under these circumstances, the potential prejudice Plaintiffs would endure for having to litigate 23 different actions outweighs the contentions made by Defendants in support of severance (*Piquion*, 211 A.D.3d at 635; *Hempstead Gen. Hosp.*, 134 A.D.2d at 569-570).

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<sup>1</sup> *Piquion* involved 32 separate claims arising out of 31 different accidents.

(2) Iconic's Motion to Compel Discovery

Iconic argues that if severance is not granted, Plaintiffs should be compelled to provide responses to their discovery demands. In accordance with this Part's rules, this branch of the motion is denied, with leave to make a new motion if so advised before the Discovery Part (IAS Part 2 Rules, Section 7[a]: "Any motions not properly before this court, including those contained within motions properly before this court, will be denied as they are before the court in error"). The Court also notes that Iconic improperly made this motion before a preliminary conference order was issued (22 NYCRR 202.8[f]).

III. Conclusion

Accordingly, it is hereby

ORDERED, that Defendants' motion to dismiss pursuant to CPLR 3211(a)(7), or alternatively, for an order of severance pursuant to CPLR 603, are denied, and it is further,

ORDERED, that Iconic's motion to compel discovery is denied without prejudice, as per the above.

This constitutes the Decision and Order of this Court.

Dated: FEB 06 2024

ENTER

Hon. 

Elizabeth A. Taylor, J.S.C.