

**Supreme Court Chambers**

SUITE 403  
ONONDAGA COUNTY COURTHOUSE  
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**Anthony J. Paris**  
JUSTICE

**Sandra L. Hollhan**  
PRINCIPAL LAW CLERK

**Effe D. O'Hara**  
SECRETARY

**LETTER DECISION**

June 17, 2020

Justin A. Calabrese, Esq.  
Hollander Legal Group, P.C.

Clifford T. Ryan, Esq.  
Abrams, Fensterman

*Via NYCEF*

Re: Nationwide Affinity Insurance Company of America, et al. vs.  
Ridgewood Diagnostic Laboratory, LLC.  
Index No: 10477/2019

Dear Counselors:

As counsel is aware, the Court has taken this motion on submission as a result of the Covid-19 pandemic. Please consider this the Court's Decision relative to Plaintiff's motion for summary judgment.

Plaintiff has moved for a judgment declaring that it is not obligated to pay no-fault claims to Defendant based on Defendant's failure to appear for properly noticed and scheduled EUOs relative to the claims included in Plaintiff's action. 11 NYCRR 65-1.1.

Defendant opposes this motion, contending that the Defendant did, in fact,

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appear at a scheduled EUO, and further that Plaintiff failed to provide a specific and objective basis for said EUOs.

A failure to comply with the provisions of an insurance policy requiring defendant to submit to an examination under oath allows the insurer to deny payment of a claim based on such a material breach of the policy and thus relieves the insurer of liability for the payment of policy proceeds. *See* 11 NYCRR 65-1.1(d); *Nationwide vs. Jamaica Wellness*, 167 AD3d 192 (4<sup>th</sup> Dept. 2018). The failure to appear at a reasonably requested EUO constitutes a breach of an existing policy condition. *Nationwide v. Jamaica Wellness, supra*.

In order to meet its initial burden on this motion, Nationwide must establish not only that Defendant failed to appear at multiple properly noticed examinations under oath, but also that Nationwide issued timely denials on that ground as to each claim. *Nationwide v. Jamaica Wellness, supra*.

Based on the record before the Court, it is abundantly clear that Plaintiff complied with all notice and justification requirements regarding the numerous EUOs that were scheduled with Defendant, and that Defendant refused and failed to attend.

Defendant cannot excuse this failure to attend the scheduled EUOs by contending that Defendant's attendance at a subsequent unrelated EUO should suffice, especially here where the subsequent unrelated EUO was held after Nationwide had already issued its denials on the claims contained in this action.

Therefore, based on the record before the Court, Plaintiff's motion is **GRANTED**, and it is hereby **DECLARED** that Plaintiff is not obligated to pay Defendant's no-fault claims based on the failure to appear for properly noticed EUO's and proper denials after such failures.

Plaintiff is to submit the appropriate Order.

Very truly yours,



Anthony V. Paris  
Justice of Supreme Court