

Scott A. Ginsberg

Shareholder

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Scott Ginsberg is a member of the Casualty Department with extensive experience defending numerous insurance carriers in disputes involving New York Personal Injury Protection claims. He also helps clients develop strategies for defending complex litigation related to medical provider fraud. As a seasoned litigator with extensive trial and motion practice experience, Scott is highly regarded for his combination of creativity, strategic judgment and courtroom prowess.

Scott also handles matters as a member of the Fraud/Special Investigation Practice Group. He focuses on fraud investigation, primarily dealing with evaluating both medical provider fraud and intentional/staged losses. Scott also has significant experience conducting Examinations Under Oath as it relates to both specific claims and broader SIU investigations.

Prior to joining Marshall Dennehey, Scott managed his own firm for several years where he focused primarily on New York personal injury protection claims. Additionally, he developed experience litigating all aspects of insurance defense, premises liability, construction and labor law, vehicular negligence and homeowners' claims.

Scott earned his *juris doctor* from the Maurice A. Deane School of Law at Hofstra University, where he served as an Editor for the *Family Court Review*. Scott earned a B.S. in Psychology and a B.A. in Criminology & Law from the University of Florida, where also he served as the president of the Criminology & Law Honor Society.

He is admitted in the states of New York and New Jersey.

Education

- Maurice A. Deane School of Law at Hofstra University (J.D., 2003)
- University of Florida

Practices

- Fraud/Special Investigation
- Personal Injury Protection (PIP) Litigation

– B.S., B.A., 2000

Admissions

- New Jersey, 2003
- New York, 2004
- U.S. District Court Eastern District of New York, 2004
- U.S. District Court Southern District of New York, 2004

Associations & Memberships

- Career Services Alumni Committee (CSAC) Member, Maurice A. Deane School of Law at Hofstra University

Results

Failure to Provide Requisite Statutorily Required Medical Assignment-of-Benefits Form results in Dismissal of New York No-Fault Arbitration Matter

We successfully defended and submitted post-hearing arguments and secured dismissal of a New York no-fault arbitration matter. The applicant, a major medical provider, filed an arbitration matter in the amount of \$361,601.62, claiming our client owed it for the claimant's unpaid medical bills following a major motor vehicle accident. The claimant had been involved in the motor vehicle accident and sought payment for medical treatment for a series of treatments rendered while hospitalized, post-accident. Counsel for the medical provider argued that the medical billing was never properly nor timely denied, therefore, payment of the claims was overdue. However, we successfully argued at the arbitration hearing that the applicant's client failed to provide the requisite statutorily required medical assignment-of-benefits form, assigning the hospital the right to sue on behalf of the injured party. After arguments were heard, the arbitrator ordered post-hearing submissions to be filed by both sides. After researching, drafting and filing a post-hearing submission, the arbitrator ruled in our client's favor, thereby dismissing the matter based on the applicant's total failure to submit the requisite form, saving our client hundreds of thousands of dollars.

Dismissals of Multiple New York No-Fault/PIP Arbitrations

The arbitrations were commenced by medical providers against the respondent-carrier for non-payment of medical bills insofar as the policyholder and the claimant engaged in material misrepresentation in the procurement of the policy, and in the presentation of the claim. We submitted a defense brief that included numerous exhibits, including examination under oath transcripts, an affidavit from the respondent-carrier's underwriting department and screenshots of insurance premium payments from the claimant to the policyholder. At the hearings, the defense argued that the respondent-carrier owed no duty of coverage insofar as the policyholder and the claimant engaged in material misrepresentation in the procurement of the policy and in the presentation of the claim. Specifically, the policyholder fraudulently obtained an insurance policy with the respondent-carrier on behalf of the claimant. The misrepresentation was deemed

“material” insofar as the respondent-carrier would have charged a higher premium based on the actual garaging location of the insured vehicle and, moreover, would not have otherwise insured the claimant. The arbitrator held that the respondent-carrier established, by a preponderance of credible evidence, that the instant loss involved fraud and misrepresentation in the procurement of the insurance policy; the policyholders’ misrepresentation with regard to the ownership, operation and garaging of the insured vehicle was material; the respondent-carrier would not have issued the policy if the facts had been disclosed by the policyholders, and that the respondent-carrier was justified in denying the claim.

Dismissal of PIP Litigation Brought by Medical Provider

We successfully secured dismissal of a New York no-fault/PIP arbitration commenced by a medical provider against a major insurance carrier for non-payment of medical bills. At the hearing, the carrier argued that the provider was ineligible for reimbursement of the disputed charges because it was not licensed in New York State with the Department of Education and the Department of State when the services at issue were rendered. Under the New York no-fault/PIP regulations, a provider of health care services is not eligible for reimbursement under the insurance law if it fails to meet any applicable state or local licensing requirements. In support of the threshold defense, we submitted copies of printouts from these Departments as conclusive evidence that the provider was not properly licensed in New York State when the services were rendered and was therefore ineligible for New York no-fault reimbursement.

PIP Case Dismissed at Trial

Obtained a dismissal at trial in Civil Court of the City of New York, Queens County. The plaintiff, an acupuncture facility, alleged wrongful denial of personal injury protection/no-fault benefits relating to acupuncture services rendered to its assignee, a claimant who sought benefits under the defendant-carrier’s policy. The trial judge granted dismissal of the complaint on the basis of the carrier’s defense, that payments were issued in accordance with the applicable fee schedule and, therefore, nothing further was owed to the plaintiff.

Summary Judgment in PIP Case

We obtained summary judgment in Civil Court of the City of New York, New York County. The plaintiff commenced an action seeking reimbursement of PIP benefits under the defendant-carrier’s policy for anesthesia rendered to the claimant during a surgical procedure. After establishing that the claimant failed to appear at multiple, duly-scheduled independent medical examinations—a condition precedent to coverage—the complaint was dismissed.

New York PIP Action Dismissed

We secured the dismissal of a New York no-fault/personal injury protection (PIP) lost wages suit that carried a potential judgment of more than \$1.37 million. The suit commenced in 2014, and over several years, the plaintiff was not cooperative in providing requested information. In 2018, the defense served a 90-day notice on the plaintiff, which advised that we would move for dismissal if the plaintiff did not take action

or file a notice of trial within 90 days. The Rockland County Supreme Court Judge recognized that there was no activity in the case for years, but was apprehensive about dismissing the case on the spot. He scheduled an additional hearing and required the plaintiff and new counsel, if retained, to appear to discuss the case status and activity. When they did not appear, Scott successfully moved for dismissal.