

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

American Transit Insurance Company v. MZY Acupuncture, P.C.

2026 NY Slip Op 02236 · No. 2024-13388 · Decided April 15, 2026

SUMMARY

The Appellate Division, Second Department, affirmed an order vacating the striking of an insurance company's complaint in a de novo no-fault benefits action. The court held that the defendant failed to establish that the plaintiff's noncompliance with discovery obligations was willful or contumacious, making the drastic sanction of striking the pleading unwarranted. The court did not reach the defendant's remaining contention.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Betsy Barros, J.P.; Barry E. Warhit, J.; Carl J. Landicino, J.; Laurence L. Love, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	April 15, 2026
DOCKET	2024-13388
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed from an order of the Supreme Court, Kings County, that granted the plaintiff leave to renew and reargue its opposition to the defendant's motion under CPLR 3126 to strike the complaint, vacated the prior order granting that relief, and denied the defendant's motion to strike.
STANDARD OF REVIEW	Abuse of discretion. The supervision of discovery, the imposition of disclosure terms and conditions, the determination whether to strike a pleading for failure to comply with court-ordered disclosure, and the nature and degree of a discovery sanction are within the sound discretion of the trial court.
PRECEDENTIAL VALUE	Published, precedential opinion of the Appellate Division, Second Department.

PARTIES

MZY Acupuncture, P.C. v. American Transit Insurance Company

TOPICS

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discovery dispute

sanctions

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the Supreme Court properly granted the plaintiff's motion for leave to reargue and, upon reargument, vacated the prior order striking the complaint under CPLR 3126.
2. Whether the defendant established that the plaintiff's failure to comply with court-ordered disclosure was willful or contumacious so as to warrant the drastic sanction of striking the complaint.

HOLDINGS

1. The Supreme Court properly granted reargument, vacated the portion of the prior order striking the complaint, and denied the defendant's motion to strike because the defendant failed to establish that the plaintiff's discovery noncompliance was willful or contumacious.

KEY QUOTATIONS

“Public policy strongly favors the resolution of actions on the merits whenever possible” ([*2])

“The striking of a party's pleading is a drastic remedy only warranted where there has been a clear showing that the failure to comply with discovery demands was willful and contumacious” ([*2])

FACTUAL BACKGROUND

American Transit Insurance Company commenced an action under Insurance Law § 5106(c) for a de novo determination of MZY Acupuncture, P.C.'s claim for no-fault insurance benefits. MZY failed to produce an entire no-fault claims file as required by a prior court order. The defendant sought to strike the complaint, but the record did not establish that the plaintiff's noncompliance was willful or contumacious.

PROCEDURAL HISTORY

The plaintiff commenced an Insurance Law § 5106(c) action seeking a de novo determination of a no-fault insurance benefits claim. The defendant moved under CPLR 3126 to strike the complaint based on the plaintiff's failure to produce an entire no-fault claims file, and the Supreme Court initially granted that branch of the motion. On renewal and reargument, the Supreme Court vacated the prior order and denied the motion to strike; the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Bernardis v Town of Islip, 95 AD3d 1050, 1050
- 101CO, LLC v Sand Land Corp., 189 AD3d 942
- Fishbane v Chelsea Hall, LLC, 65 AD3d 1079, 1081
- Orgel v Stewart Tit. Ins. Co., 91 AD3d 922, 923
- Roug Kang Wang v Chien-Tsang Lin, 94 AD3d 850, 852
- Dokaj v Ruxton Tower Ltd. Partnership, 91 AD3d 812, 814
- Quinones v Long Is. Jewish Med. Ctr., 90 AD3d 632, 632
- Krause v Lobacz, 131 AD3d 1128, 1129
- Arpino v F.J.F. & Sons Elec. Co., Inc., 102 AD3d 201, 210
- Negro v St. Charles Hosp. & Rehabilitation Ctr., 44 AD3d 727, 728
- New York Timber, LLC v Seneca Cos., 133 AD3d 576, 577
- Mangione v Jacobs, 121 AD3d 953, 954
- Edwards v Freedom Church of Revelation, 230 AD3d 740, 742
- Ferjuste v 437 BMW, LLC, 219 AD3d 1308, 1310
- PAL Envtl. Servs., Inc. v LJC Dismantling Corp., 157 AD3d 808, 809-810
- Singer v Riskin, 137 AD3d 999, 1001

OPINION

PER CURIAM.

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<p>Appellate Division, Second Department</p> <p>Published by New York State Law Reporting
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revision before publication in the Official Reports.</p> </div> <div> <p>American Transit
Insurance Company, respondent,</p> <p>v</p> <p>MZY Acupuncture, P.C., etc., appellant.</p>
</div> <p>Supreme Court of the State of New York, Appellate Division, Second Judicial

Department

Decided on April 15, 2026

2024-13388, (Index No. 528714/22)

Betsy Barros, J.P.

Barry E. Warhit

Carl J. Landicino

Laurence L. Love, JJ.

Roman Kravchenko, Melville, NY, for appellant.

Short & Billy, P.C., New York, NY (Seok Ho [Richard] Kang of counsel), for respondent.

[*1]

DECISION & ORDER

In an action pursuant to Insurance Law § 5106(c) for a de novo determination of a claim for no-fault insurance benefits, the defendant appeals from an order of the Supreme Court, Kings County (Leon Ruchelsman, J.), dated November 6, 2024.

The order granted the plaintiff's motion for leave to renew and reargue its opposition to that branch of the defendant's prior motion which was pursuant to CPLR 3126 to strike the complaint, which had been granted in an order of the same court (Rachel E. Freier, J.) dated June 12, 2023, and, upon renewal and reargument, vacated so much of the order dated June 12, 2023, as granted that branch of the defendant's prior motion, and thereupon, denied that branch of the defendant's prior motion.

ORDERED that the order dated November 6, 2024, is affirmed, with costs.

In October 2022, the plaintiff commenced this action pursuant to Insurance Law § 5106(c) for a de novo determination of the defendant's claim for no-fault insurance benefits.

In May 2023, the defendant moved, inter alia, pursuant to CPLR 3126 to strike the complaint for the plaintiff's failure to comply with a prior order of the Supreme Court to produce an entire no-fault claims file. The plaintiff opposed the motion.

In an order dated June 12, 2023 (hereinafter the June 2023 order), the court, among other things, granted that branch of the defendant's motion.

Thereafter, the plaintiff moved for leave to renew and reargue its opposition to that branch of the defendant's motion which was pursuant to CPLR 3126 to strike the complaint and, upon renewal and reargument, to vacate the June 2023 order and to deny that branch of the defendant's prior motion.

The defendant opposed the motion. In an order dated November 6, 2024, the Supreme Court granted the plaintiff's motion. The defendant appeals.

"The supervision of discovery, and the setting of reasonable terms and conditions for disclosure, are matters within the sound discretion of the trial court" (*Bernardis v Town of Islip*, 95 AD3d 1050, 1050; *see* *101CO, LLC v Sand Land Corp.*, 189 AD3d 942), as is "[t]he determination whether to strike a pleading for failure to comply with court-ordered disclosure" (*Fishbane v Chelsea Hall, LLC*, 65 AD3d 1079, 1081; *see* *Orgel v Stewart Tit.*

Ins. Co., 91 AD3d 922, 923), as well as the "nature and degree of the sanction to be imposed" (*Roug Kang Wang v Chien-Tsang Lin*, 94 AD3d 850, 852; *see* *Dokaj v Ruxton Tower Ltd. Partnership*, 91 AD3d 812, 814; *Quinones v Long* [*2]*Is. Jewish Med. Ctr.*, 90 AD3d 632, 632).

However "[p]ublic policy strongly favors the resolution of actions on the merits whenever possible" (*Krause v Lobacz*, 131 AD3d 1128, 1129, quoting *Arpino v F.J.F. & Sons Elec. Co., Inc.*, 102 AD3d 201, 210; *see* *Negro v St. Charles Hosp. & Rehabilitation Ctr.*, 44 AD3d 727, 728), and "[t]he striking of a party's pleading is a drastic remedy only warranted where there has been a clear showing that the failure to comply with discovery demands was willful and contumacious" (*Krause v Lobacz*, 131 AD3d at 1129, quoting *Arpino v F.J.F. & Sons Elec.*

Co., Inc., 102 AD3d at 210; *see* *New York Timber, LLC v Seneca Cos.*, 133 AD3d 576, 577; *Mangione v Jacobs*, 121 AD3d 953, 954).
Here, the defendant failed to establish that the plaintiff's conduct was willful or contumacious (*see* *Edwards v Freedom Church of Revelation*, 230 AD3d 740, 742; *Ferjuste v 437 BMW, LLC*, 219 AD3d 1308, 1310; *PAL Envtl.*

Servs., Inc. v LJC Dismantling Corp., 157 AD3d 808, 809-810; *Singer v Riskin*, 137 AD3d 999, 1001). Accordingly, the Supreme Court properly granted that branch of the plaintiff's motion which was for leave to reargue its opposition to that branch of the defendant's motion which was pursuant to CPLR 3126 to strike the complaint and, upon reargument, properly vacated so much of the June 2023 order as granted that branch of the defendant's prior motion and thereupon, denied that branch of the defendant's prior motion.
In light of our determination, we need reach the defendant's remaining contention.
BARROS, J.P., WARHIT, LANDICINO and LOVE, JJ., concur.
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