

**Matter of American Ind. Ins. Co. v Nova Acupuncture  
PC**

2018 NY Slip Op 30850(U)

January 22, 2018

Supreme Court, Kings County

Docket Number: 505666/2014

Judge: Carl J. Landicino

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part 81 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22<sup>nd</sup> day of January, 2018.

P R E S E N T:

HON. CARL J. LANDICINO, JSC

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In the matter of the Application  
AMERICAN INDEPENDENT INSURANCE CO.,  
Petitioner,  
- against -

Index No. 505666/2014

NOVA ACUPUNCTURE PC, ART OF HEALING  
MEDICINE, PC, KJC CHIROPRACTIC, LLC,  
and ABC PHYSICAL THERAPY, P.C.,  
a/o Henry Makinson (AAA #412011023536),  
Rosana Jacques (AAA #41201102897),  
Samuel Hawkins (AAA #41201102451), and  
Elin Cardichon (AAA #412011023524),

DECISION AND ORDER  
AFTER HEARING

Respondents.

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Pursuant to the Decision and Order of the Appellate Division, Second Department, in relation to an underlying Order (April 6, 2015) of the Honorable Justice David Schmidt, retired, by which Petitioner's Petition was denied, this Court held a hearing on a framed "issue of whether [Petitioner] controls, is controlled by, or is under common control by or with an authorized insurer and, thereafter, for a new determination of the petition".

At the hearing of this matter on January 19, 2018 the petitioner represented that it had no witnesses and no evidence to proffer. The Petitioner requested that this Court reconsider the holding of the Appellate Division in that it believed that the framed issue was not appropriate. Petitioner thereafter conceded that it had the burden of proof in relation to the framed issue before the Court. Petitioner then rested.

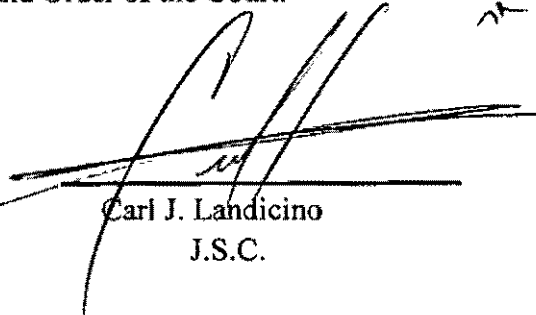
The Respondents thereafter moved for a directed verdict. That application was reserved.  
Respondent thereafter rested.

Petitioner's request that this Court reconsider the holding of the Appellate Division is without merit. It is the Appellate Division that is empowered to review the judgment or order of this Court. This Court is subject to the determination and/or direction of the Appellate Division, not the reverse. See New York State Constitution Article IV §§ 4 and 5. Accordingly, the request by the Petitioner is denied.

In as much as Petitioner has admittedly failed to proffer any testimony or documentary evidence in relation to the framed issue, Petitioner has failed to meet its *prima facie* burden. The Appellate Division has held that a resolution of the framed issue is necessary for a determination of the subject petition. As such Respondent's application for a directed verdict is granted. Accordingly, the Petition is denied.

The foregoing constitutes the Decision and Order of the Court.

ENTER:

  
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Carl J. Landicino  
J.S.C.

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