

Hertz Vehs., LLC v A & R Med. Supply Corp
2026 NY Slip Op 30929(U)
March 9, 2026
Supreme Court, New York County
Docket Number: Index No. 151977/2025
Judge: Matthew V. Grieco
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MATTHEW V. GRIECO PART 30M

Justice

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HERTZ VEHICLES, LLC, AND ALL OF ITS AFFILIATES AND SUBSIDIARIES, INCLUDING BUT NOT LIMITED TO THE HERTZ CORPORATION, AND HERTZ CO.,

Plaintiff,

- v -

A AND R MEDICAL SUPPLY CORP, ACCELERATED SURGICAL CENTER A/K/A ACCELERATED SURGICAL CENTER OF NORTH JERSEY, LLC, AMERICAN MEDICAL INITIATIVES, P.C., BARNERT AAS, P.C., CENTER MEDICAL SUPPLIES, INC., DEMCH MEDEX CORP, ETMC PHARMACY INC., FAT RABBIT ORTHOPEDICS, PLLC, LINDEN BLVD SUPPLIES, INC., M & R EXPRESS MEDICAL SUPPLY, INC., M.S. PHYSICAL THERAPY, P.C., ORTHOCARE SOLUTIONS, INC., PREVAIL PHARMACY, INC., STAR LIGHT SUPPLY, LLC, TITAN DIAGNOSTIC IMAGING SERVICES, INC., TOP STAR SUPPLIES, INC., UPTOWN HEALTH CARE MANAGEMENT, INC. D/B/A EAST TREMONT MEDICAL CENTER, YS HEALTHCARE CHIROPRACTIC DIAGNOSTIC, P.C., LEON WHICHARD, MATTHEW BROWN

Defendants.

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INDEX NO. 151977/2025
MOTION DATE 10/07/2025
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, and for the reasons stated infra, plaintiff's motion for a default judgment is granted.

On February 12, 2025, plaintiff, Hertz Vehicles, LLC, and All of Its Affiliates and Subsidiaries, Including but Not Limited to the Hertz Corporation and Hertz Co. ("Hertz"), commenced this action for a declaratory judgment that it owes no duty to pay any no-fault claims arising out of a motor vehicle collision that allegedly occurred on July 22, 2024, on the ground that the claimants defendants, Leon Justin Whichard and

Matthew Brown, each failed to appear for duly and properly requested examinations under oath (“EUOs”) on two occasions, which constituted a violation of a condition precedent to coverage by the terms of the policy and under the no-fault regulations (NYSCEF Doc. No. 1 [Summons and Complaint]).

Defendants Accelerated Surgical Center a/k/a Accelerated Surgical Center of North Jersey, LLC, Barnert AAS, P.C., ETMC Pharmacy Inc., Fat Rabbit Orthopedics, PLLC, Uptown Health Care Management, Inc. d/b/a East Tremont Medical Center, and YS Healthcare Chiropractic Diagnostic, P.C filed timely answers (NYSCEF Doc. Nos. 21, 23). Plaintiff has been unable to locate the claimants, Whichard and Brown, for service (NYSCEF Doc. No. 36 at 2 n. 2).

On October 7, 2025, plaintiff moved for a default judgment pursuant to CPLR 3215 against all the served non-answering defendants (NYSCEF Doc. Nos. 35-36).

By stipulation dated January 8, 2026 (NYSCEF Doc. No. 56), plaintiff accepted the late answer of defendants A and R Medical Supply Corp., Linden Blvd. Supplies, Inc., and M & R Express Medical Supply, Inc. (NYSCEF Doc. No. 31), and withdrew its default judgment motion as to them.

Plaintiff now seeks default judgment against the remaining non-answering defendants: American Medical Initiatives, P.C., Center Medical Supplies, Inc., Demch Medex Corp., M.S. Physical Therapy, P.C., Orthocare Solutions, Inc., Prevail Pharmacy, Inc., Star Light Supply, LLC, Titan Diagnostic Imaging Services, Inc., and Top Star Supplies, Inc.

A plaintiff seeking default judgment against a non-appearing defendant must move within one year of the default (*see* CPLR 3215[c]), and file proof of: (1) service of

the summons and complaint, or summons with notice; (2) the facts constituting the claim; and (3) the default (*see* CPLR 3215[f]; *Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023]).

To establish the “facts constituting the claim,” the movant need only demonstrate “enough facts to enable a court to determine that a viable cause of action exists” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]), which can be effected by affidavit of a party or by verified complaint, if one has been properly served (*see id.* at 70; CPLR 3215[f]). The “standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987]).

“The failure of a person eligible for no-fault benefits to appear for a properly noticed EUO constitutes a breach of a condition precedent vitiating coverage” (*Mapfre Ins. Co. of New York v Manoo*, 140 AD3d 468, 470 [1st Dept 2016]).

Here, plaintiff has demonstrated that it is entitled to a default judgment by submitting, *inter alia*: the summons and verified complaint (NYSCEF Doc. No. 1); affidavits of service and additional service in compliance with CPLR 3215(g)(4) (NYSCEF Doc. Nos. 4, 6-7, 12-17, 33-34); an affirmation of a claims adjuster, employed by a third-party administrator for Hertz, ESIS, Inc., attesting to claims received from or on behalf of claimants Whichard and Brown, the reasons Hertz requested EUOs for both claimants, the timely mailing and scheduling of at least two EUOs for each claimant, and both claimants’ failure to appear at any EUO (NYSCEF Doc. No. 38); affirmations of an attorney, attesting to his firm’s business practices in generating and mailing EUO notices, his review of the files, and his personal presence and both claimants’ failure to appear at all the scheduled EUOs (NYSCEF Doc. No. 37, 43); a police accident report

(NYSCEF Doc. No. 41); no-fault claims forms (NYSCEF Doc. Nos. 44-45); EUO scheduling letters with affidavits of service (NYSCEF Doc. No. 43); and an affirmation of counsel in support of the motion (NYSCEF Doc. No. 36).

It is therefore

ORDERED that plaintiff's motion for default judgment is granted as to defendants American Medical Initiatives, P.C., Center Medical Supplies, Inc., Demch Medex Corp., M.S. Physical Therapy, P.C., Orthocare Solutions, Inc., Prevail Pharmacy, Inc., Star Light Supply, LLC, Titan Diagnostic Imaging Services, Inc., and Top Star Supplies, Inc.; and it is further

ADJUDGED and DECLARED that plaintiff owes no duty to afford, pay, or cover any no-fault claims of defendants American Medical Initiatives, P.C., Center Medical Supplies, Inc., Demch Medex Corp., M.S. Physical Therapy, P.C., Orthocare Solutions, Inc., Prevail Pharmacy, Inc., Star Light Supply, LLC, Titan Diagnostic Imaging Services, Inc., or Top Star Supplies, Inc., arising from the July 22, 2024 collision referenced by Hertz claim number 1M01M013912777; and it is further

ORDERED and ADJUDGED that all no-fault lawsuits, arbitrations, awards, judgments, and claims filed by defendants American Medical Initiatives, P.C., Center Medical Supplies, Inc., Demch Medex Corp., M.S. Physical Therapy, P.C., Orthocare Solutions, Inc., Prevail Pharmacy, Inc., Star Light Supply, LLC, Titan Diagnostic Imaging Services, Inc., or Top Star Supplies, Inc., arising from the July 22, 2024 collision referenced by Hertz claim number 1M01M013912777, are hereby dismissed or permanently stayed; and it is further

ORDERED that the balance of this action is severed and continued.

This constitutes the decision and order of the Court.

3/9/2026
DATE

MG

MATTHEW V. GRIECO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE