

**Unitrin Auto & Home Ins. Co. v AMD Chiropractic,
P.C.**

2011 NY Slip Op 32696(U)

April 8, 2011

Supreme Court, New York County

Docket Number: 107835/2010

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: _____

PART 46

Index Number : 107835/2010
 UNTRIN AUTO & HOME INS. CO.
 VS.
 AMD CHIROPRACTICE, P.C.
 SEQUENCE NUMBER : 001
 DEFAULT JUDGMENT

INDEX NO. _____
 MOTION DATE _____
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, It is ordered ~~that this motion~~ and adjudged that:

The court grants plaintiff's motion for a declaratory judgment on default against all defendants, without opposition, pursuant to the accompanying decision. C.P.L.R. §§ 3001, 3215. The Clerk shall enter that judgment forthwith.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 4/8/11

Larry Drillings

J.S.C.

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/JUDG.

☐ SETTLE ORDER /JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

-----X

UNITRIN AUTO & HOME INSURANCE COMPANY,

Index No. 107835/2010

Plaintiff

- against -

DECISION AND ORDER

AMD CHIROPRACTIC, P.C., OLGA BARD
ACUPUNCTURE, P.C., BEDFORD MEDICAL
CARE, P.C., CMS MEDICAL SUPPLY, INC.,
COMPREHENSIVE PSYCHOLOGICAL EVALUATION
P.C., DYNAMIC MEDICAL IMAGING, P.C.,
FEMA MEDICAL SUPPLY, INC., GABA
MEDICAL, P.C., GOODWILL ACUPUNCTURE,
P.C., IMMEDIATE IMAGING, P.C., MAGIC
TOUCH PHYSICAL THERAPY, P.C., NEW AGE
ORTHOPEDIC REHABILITATION CENTER,
P.C., PARK RADIOLOGY, P.C., PERSONAL
TOUCH MEDICAL, P.C., KHALIKA AYESHA
ROWE, SUPERIOR HEALTH CHIROPRACTIC,
P.C., and TOHIR MUMINOV,

Defendants

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obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
141B).

-----X
LUCY BILLINGS, J.S.C.:

Plaintiff seeks a judgment declaring that plaintiff owes no
duty to compensate defendants pursuant to New York Insurance Law
§ 5103 for expenses incurred from a collision August 18, 2009, in
Kings County, when a motor vehicle owned by a nonparty and
insured by plaintiff, struck defendant Muminov, a pedestrian.
Plaintiff moves for a default judgment against defendants.

C.P.L.R. § 3215(e). Although plaintiff served the summons and complaint on the corporate defendants July 16, 2010, and mailed them the required second copies, C.P.L.R. § 3215(g)(4), and served the summons and complaint on defendant Muminov July 17, 2010, and on defendant Rowe August 14, 2010, defendants failed to answer.

Plaintiff's witness attests that the corporate defendants submitted claims for medical diagnostic and treatment expenses due to the August 2009 collision, as assignees of the individual defendants' benefits under plaintiff's insurance policy. See Fair Price Med. Supply Corp. v. Travelers Indem. Co., 10 N.Y.3d 556, 563 (2008); Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 9 N.Y.3d 312, 317 (2007). As assignees, these defendants may claim benefits only to the extent that the assignor individual defendants are entitled to benefits. Matter of International Ribbon Mills, 36 N.Y.2d 121, 126 (1975); Madison Liquidity Invs. 119, LLC v. Griffith, 57 A.D.3d 438, 440 (1st Dep't 2008); Condren, Walker & Co. v. Portnoy, 48 A.D.3d 331 (1st Dep't 2008); Trisingh Enters. v. Kessler, 249 A.D.2d 45, 46 (1st Dep't 1998).

Plaintiff's witness also attests that plaintiff notified all defendants of requested examinations under oath, substantiated by

the notices themselves, and that the corporate defendants did not appear for the examinations. These defendants' noncooperation constitutes a failure of a condition precedent to insurance benefits for the motor vehicle collision to any parties potentially entitled to benefits under Insurance Law § 5103 or their assignees. 11 N.Y.C.R.R. § 65-1.1(a). See N.Y. Ins. Law § 5103(d) and (h); Unitrin Advantage Ins. Co. v. Bayshore Physical Therapy, PLLC, 82 A.D.3d 559, 560 (1st Dep't 2011); Stephen Fogel Psychological, P.C. v. Progressive Cas. Ins. Co., 35 A.D.3d 720, 721 (2d Dep't 2006).

Consequently, the court grants plaintiff's motion for a default judgment against all defendants. C.P.L.R. § 3215; American Tr. Ins. Co. v. Wilfred, 296 A.D.2d 360, 361 (1st Dep't 2002); Utica First Ins. Co. v. Santagata, 66 A.D.3d 876, 878 (2d Dep't 2009); Lancer Ins. Co. v. Whitfield, 61 A.D.3d 724, 725 (2d Dep't 2009); Travelers Indem. Co. of Am. v. Pullini Water Servs., Inc., 35 A.D.3d 846, 847 (2d Dep't 2006). The court adjudges and declares that plaintiff is not obligated to compensate defendants for expenses related to the collision August 18, 2009. C.P.L.R. § 3001; American Tr. Ins. Co. v. Wilfred, 296 A.D.2d at 361-62; Travelers Indem. Co. of Am. v. Pullini Water Servs., Inc., 35 A.D.3d at 846-47. See Unitrin Advantage Ins. Co. v. Bayshore

Physical Therapy, PLLC, 82 A.D.3d at 560. This decision constitutes the court's order and judgment.

DATED: April 8, 2011

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

UNFILED JUDGMENT

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