

**Unitrin Direct Ins. Co. v A.C. Med., P.C.**

2015 NY Slip Op 30159(U)

January 15, 2015

Supreme Court, New York County

Docket Number: 154130/14

Judge: Donna M. Mills

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

PRESENT : DONNA M. MILLS Justice

PART 58

UNITRIN DIRECT INSURANCE COMPANY,

Plaintiff,

-v-

A.C. MEDICAL, P.C., AVANGUARD MEDICAL GROUP, PLLC, GATE MEDICAL SERVICES, P.C., HAAR ORTHOPAEDICS & SPORTS MEDICINE, P.C., MAXIMUM CHIROPRACTIC, P.C., METROPOLITAN MEDICAL & SURGICAL, P.C., MINGMEN ACUPUNCTURE SERVICES, P.C., REGENCY HEALTHCARE MEDICAL, PLLC, SP ORTHOTIC SURGICAL & MEDICAL SUPPLY, INC., ULTIMATE ANESTHESIA, PLLC, US TECH REHAB, INC., VITAL CHIROPRACTIC, P.C. and TAIBAH CACERES,

Defendants.

INDEX No. 154130/14

MOTION DATE

MOTION SEQ. No. 001

MOTION CAL No.

The following papers, numbered 1 to were read on this motion for a Default Judgment.

PAPERS NUMBERED

Notice of Motion/Order to Show Cause-Affidavits- Exhibits... 1

Answering Affidavits- Exhibits 2

Replying Affidavits 3

CROSS-MOTION: YES NO

Upon the foregoing papers, it is ordered that this motion for a default judgment in favor of the plaintiff and against all defendants except A.C. Medical P.C., Maximum Chiropractic, P.C., US Tech Rehab, Inc., Avanguard Medical Group, PLLC, and

Metropolitan Medical & Surgical, P.C., is decided as follows:

This action arises out of an alleged collision involving a vehicle and a pedestrian. Defendant Taibah Caceres (the "Claimant") allegedly was a pedestrian crossing the street near the intersection of 120<sup>th</sup> Street and Liberty Avenue when a 1998 Dodge - insured by plaintiff Unitrin Advantage Insurance Company ("Unitrin") in the name of a Khalisha Hancock allegedly struck the Claimant on February 22, 2013. The Claimant reported to have sustained bodily injuries in this collision. Unitrin assigned claim number C018229NY13 to all No-Fault claims relating to the February 22, 2013 collision. Thereafter, Unitrin received several claims from medical provider defendants named in this action, seeking to recover No-Fault benefits as the alleged assignees of the Claimant.

Unitrin sought to verify that the Claimant was, in fact, injured and did actually receive the medical treatment for which claims were submitted on the Claimant's behalf by the Medical Provider Defendants. To that end, Unitrin, duly sought verification of these claims by requesting the examination under oath ("EUO") of the Claimant to confirm the legitimacy of this loss and the necessity of any alleged treatment. Unitrin contends that the Claimant's testimony at her EUO raised issues as to the legitimacy and medical necessity of the purported medical treatment.

Unitrin further fully and properly sought verification of these claims by requesting the EUO of the Medical Provider Defendants, except Avanguard Medical Group, PLLC, to confirm the legitimacy of this loss and the necessity of any alleged treatment. Unitrin contends that, despite due demand, the Medical Provider Defendants, except Avanguard Medical Group, PLLC, failed to appear for the properly requested EUOs on

two occasions each, which was a material breach of the No-Fault Regulations and policy.

Unitrin denied all No-Fault coverage for this claim and now seek to disclaim all No-Fault coverage. Defendants Haar Orthopaedics & Sports Medicine, P.C., and Regency Healthcare Medical, PLLC's ("the Opposing Defendants") oppose the plaintiff's motion for a default judgment.

It is undisputed that all of the defendants except A.C. Medical. P.C., Maximum Chiropractic, P.C., Vital Chiropractic, P.C., US Tech Rehab, Inc., Avanguard Medical Group, PLLC, and Metropolitan Medical & Surgical, P.C. have failed to timely answer the Summons and Complaint. The Opposing Defendants have failed to establish a meritorious defense to this action. As such, Plaintiff is entitled to a declaratory judgment in its favor that it is not obligated to honor or pay claims or future claims for reimbursement or no fault benefits by the Medical Provider Defendants that have not answered herein relating to the February 22, 2013 collision involving Taibah Caceres.

Accordingly it is

Ordered that the plaintiff's motion for a default judgment is granted; and it is further

ORDERED and ADJUDGED that the plaintiff's motion for a declaratory judgment that it is not obligated to honor or pay claims or future claims for reimbursement or no fault benefits by the defaulting Medical Provider Defendants, Gate Medical Services, P.C., Haar Orthopaedics & Sports Medicine, P.C., Mingmen Acupuncture Services, P.C., Regency Healthcare a/k/a Regency Healthcare Medical, PLLC, SP Orthototic Surgical & Medical Supply, Inc., and Ultimate Anesthesia, PLLC, as assignees of

Taibah Caceres submitted, under Unitrin Advantage Insurance Company assigned claim number C018229NY13 to all No-Fault claims relating to the February 22, 2013 collision.

Dated: 1/15/15

  
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**J.S.C.**  
**DONNA M. MILLS, J.S.C.**  
 NON-FINAL DISPOSITION

Check one:  FINAL DISPOSITION