

<b>American Tr. Ins. Co. v Urena</b>
2019 NY Slip Op 31030(U)
April 8, 2019
Supreme Court, New York County
Docket Number: 158736/2017
Judge: Melissa A. Crane
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**SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY**

**PRESENT: MELISSA A. CRANE**  
**HON. MELISSA CRANE** Justice

**PART 15**

AMERICAN TRANSIT INSURANCE COMPANY

INDEX NO. 158736/2017  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001  
MOTION CAL. NO. \_\_\_\_\_

- v -

UBALDO URENA, ALMATCARE MEDICAL SUPPLY, INC., ANDRE JOCELYN DUHAMEI, ARTHUR AVENUE MEDICAL SERVICES, P.C., ACS OF ENGLEWOOD, LLC., ASCE ANESTHESIA, DITMAS PRIMARY MEDICAL CARE, P.C., FIRST HAND PHYSICAL THERAPY, P.C., GALLERY CHIROPRACTIC, P.C., HAAR ORTHOPEDICS & SPORTS MEDICINE, P.C., HAND BY HAND PT, P.C., INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, LLC., LENOX HILL RADIOLOGY AND MEDICAL IMAGING ASSOCIATES, P.C., MEDFORD CHIROPRACTIC, P.C., NEW MILLENNIUM MEDICAL IMAGING, P.C., PALMS PHYSICAL THERAPY, P.C., PEDRO TORRES JIMENEZ MD, PSYCHOLOGYAFTER ACCIDENT, P.C., REGAL ACUPUNCTURE, P.C., SHAHID MIAN, M.D., P.C., WHIPLASH CHIROPRACTIC, P.C.

The following papers, numbered \_ to \_ were read on this motion to/for \_\_\_\_\_.

Notice of Motion/Order to Show Cause — Affidavits — Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

<u>PAPERS NUMBERED</u>
_____
_____

**CROSS-MOTION: YES NO**

Upon the foregoing papers, it is ordered that this motion is

This case arises from an automobile accident that occurred on November 6, 2016, involving defendant Ubaldo Urena (“Urena”). Urena alleges that he sustained serious bodily injuries as a result of the collision that occurred on November 6, 2016, and involved the insured, NUNEZPLACENC T, and Urena, who was a passenger in the insured vehicle. Urena submitted claims to plaintiff, American Transit Insurance Company (“American Transit”) for no-fault benefits under the insurance policy that plaintiff issued to the insured. Urena assigned the rights to collect no-fault benefits to co-defendants/medical providers. Plaintiff commenced an action on or about October 2, 2017, by a Summons and Complaint, seeking a declaratory judgment

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

against claimant as well as numerous co-defendants/medical providers under American Transit insurance policy BC B612668, Claim No: 672699-02.

First, plaintiff has discontinued this action against the answering defendants GALLERY CHIROPRACTIC, P.C., HAND BY HAND PT, P.C., MEDFORD CHIROPRACTIC, P.C., PALMS PHYSICAL THERAPY, P.C., and WHIPLASH CHIROPRACTIC, P.C. (see NYSCEF Doc No 22, Stipulation of Discontinuance) (the “Answering Defendants”).

Second, plaintiff does not seek relief against PEDRO TORRES JIMENEZ, MD, because plaintiff did not timely serve defendant Jimenez (see plaintiff’s aff in support by Justin Rothman, p. 2, fn 3).

Plaintiff American Transit now moves for a default judgment pursuant to CPLR 3215 against the remaining non-answering defendants: UBALDO URENA, ALMATCARE MEDICAL SUPPLY, INC., ANDRE JOCELYN DUHAMEI, ARTHUR AVENUE MEDICAL SERVICES, P.C., ACS OF ENGLEWOOD, LLC., ASCE ANESTHESIA, DITMAS PRIMARY MEDICAL CARE, P.C., FIRST HAND PHYSICAL THERAPY, P.C., HAAR ORTHOPEDICS & SPORTS MEDICINE, P.C., INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, LLC., LENOX HILL RADIOLOGY AND MEDICAL IMAGING ASSOCIATES, P.C., NEW MILLENNIUM MEDICAL IMAGING, P.C., PSYCHOLOGYAFTER ACCIDENT, P.C., REGAL ACUPUNCTURE, P.C., and SHAHID MIAN, M.D., P.C. Plaintiff has submitted proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of defendant’s failure to answer or appear (see CPLR 3215; see also, *Atlantic Cas. Ins. Co. v RJNJ Services, Inc.*, 89 AD3d 649 [2nd Dept 2011]). Plaintiff demonstrates prima facie its denial of no-fault claims based on Urena’s failure to appear for Independent Medical Examinations (“IMES”) on January 18, 2017 and February 15, 2017.

Plaintiff submits, *inter alia*: IME request letters; an affidavit from Christopher Billups, an American Transit claim representative who attests to the processing of bills, and issuance of denial of claim forms in this case; an affidavit from Luis Campbell, mailroom supervisor at American Transit; an affidavit from Jeffrey Rubinton, who attests that he mailed the IME requests; and an affidavit from Dr. Manevitz who attests to Urena's non-appearance at the IMEs. None of the remaining defendants have answered or opposed this motion.

Accordingly, it is

**ORDERED** that plaintiff American Transit's motion for default judgment against defendants UBALDO URENA, ALMATCARE MEDICAL SUPPLY, INC., ANDRE JOCELYN DUHAMEI, ARTHUR AVENUE MEDICAL SERVICES, P.C., ACS OF ENGLEWOOD, LLC., ASCE ANESTHESIA, DITMAS PRIMARY MEDICAL CARE, P.C., FIRST HAND PHYSICAL THERAPY, P.C., HAAR ORTHOPEDICS & SPORTS MEDICINE, P.C., INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, LLC., LENOX HILL RADIOLOGY AND MEDICAL IMAGING ASSOCIATES, P.C., NEW MILLENNIUM MEDICAL IMAGING, P.C., PSYCHOLOGYAFTER ACCIDENT, P.C., REGAL ACUPUNCTURE, P.C., and SHAHID MIAN, M.D., P.C., is granted without opposition; and it is further

**ADJUDGED AND DECLARED** that defendant Ubaldo Urena is not eligible injured persons entitled to no-fault benefits under American Transit insurance policy BC B612668, Claim No: 672699-02; and it is further

**ADJUDGED AND DECLARED** that defendants UBALDO URENA, ALMATCARE MEDICAL SUPPLY, INC., ANDRE JOCELYN DUHAMEI, ARTHUR AVENUE MEDICAL SERVICES, P.C., ACS OF ENGLEWOOD, LLC., ASCE ANESTHESIA, DITMAS PRIMARY

MEDICAL CARE, P.C., FIRST HAND PHYSICAL THERAPY, P.C., HAAR ORTHOPEDICS & SPORTS MEDICINE, P.C., INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, LLC., LENOX HILL RADIOLOGY AND MEDICAL IMAGING ASSOCIATES, P.C., NEW MILLENNIUM MEDICAL IMAGING, P.C., PSYCHOLOGY AFTER ACCIDENT, P.C., REGAL ACUPUNCTURE, P.C., and SHAHID MIAN, M.D., P.C., are not entitled to no-fault coverage for the motor vehicle accident that occurred on November 6, 2016, involving individual defendant Urena Ubaldo, for claims submitted under American Transit insurance policy BC B612668, Claim No: 672699-02, as referenced in the complaint, and plaintiff American Transit has no duty to provide, pay, honor, or reimburse any claims in any current or future proceedings, including without limitation arbitrations and/or lawsuits, seeking to recover no-fault benefits arising out of the November 6, 2016 accident.

DATED: 4-8, 2019  
New York, New York

ENTER:

  
MELISSA A. CRANE, J.S.C

**HON. MELISSA A. CRANE**  
**J.S.C.**

Check one:  FINAL DISPOSITION     NON-FINAL DISPOSITION  
 Check if appropriate: MOTION IS:  GRANTED     DENIED     GRANTED IN PART     OTHER  
 Check if appropriate:  DO NOT POST     REFERENCE     SETTLE ORDER     SUBMIT ORDER  
 FIDUCIARY APPOINTMENT