

<b>PV Holding Corp. v Citimedical I, PLLC</b>
2020 NY Slip Op 31143(U)
April 28, 2020
Supreme Court, New York County
Docket Number: 152588/2019
Judge: Shawn T. Kelly
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART IAS MOTION 27

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PV HOLDING CORP. INCLUDING ALL OF ITS  
SUBSIDIARIES AND AFFILIATES, INCLUDING BUT NOT  
LIMITED TO AVIS BUDGET, LLC, AVIS CAR RENTAL,  
LLC, BUDGET CAR RENTAL, LLC, BUDGET TRUCK  
RENTAL, LLC, PAYLESS CAR RENTAL, INC. AND  
ZIPCAR, INC.,

INDEX NO. 152588/2019  
MOTION DATE 03/03/2020  
MOTION SEQ. NO. 001

Plaintiff,

- v -

**DECISION + ORDER ON  
MOTION**

CITIMEDICAL I, PLLC, CATSKILL REGIONAL MEDICAL  
CENTER, GEN CEL DIAGNOSTICS, LENOX HILL  
RADIOLOGY AND MEDICAL IMAGING ASSOCIATES,  
P.C., OPTIMUM HEALTH ACUPUNCTURE,  
P.C., SPINECARE NYC ORTHOPEDICS, PRECISE PAIN  
MEDICINE, LLC, TOWN OF HANCOCK VOLUNTEER  
AMBULANCE CORPS., INC., ARDEN KAISMAN, M.D.,  
P.C., MND CHIROPRACTIC, P.C., ALL BOROUGH  
CHIROPRACTIC, P.C., DIANON SYSTEMS, INC., EMU  
SURGICAL CENTER, LLC, SOLOMON HALIOUA, M.D.,  
SEONG HOON MOON, DPT, LEONELA SALAZAR

Defendant.

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HON. SHAWN T. KELLY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25,  
26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, it is ordered

Plaintiff PV Holding Corp., including all of its subsidiaries and affiliates, including but  
not limited to, Avis Budget, LLC., Avis Car Rental, LLC., Budget Car Rental, Inc., and Zipcar  
Inc., (herein "Avis" or "Plaintiff"), moves for a default judgment against Defendants  
Citimedical, PLLC, Catskill Regional Medical Center, Gen Cel Diagnostics, Lenox Hill  
Radiology and Medical Imaging Associates, P.C., Optimum Health Acupuncture, P.C.,  
Spinecare NYC Orthopedics, Precise Pain Medicine, LLC, Arden Kaisman, M.D., P.C., MND

Chiropractic P.C., All Borough Chiropractic, P.C., Dianon Systems, Inc., Emu Surgical Center, LLC, Solomon Halioua, M.D., Seong Hoon Moon, D.P.T., (herein collectively “Defendant Medical Providers”) and Leonela Salazar (herein “Defendant Salazar”).<sup>1</sup> For the foregoing reasons, the motion is granted.

This action arises out of an alleged vehicular collision that occurred on September 4, 2017 on State Road 17 in Hancock, New York. According to the police report, non-party driver, Jose Colon, was operating a 2017 Honda, owned and self-insured by Plaintiff Avis, when he lost control of the vehicle, struck a sign post with the driver's side mirror and drove into a ditch. The police reports lists Defendant, Leonella Salazar, as a passenger in the Avis vehicle. Salazar reported to have sustained injuries and began treatment with the Defendant Medical Providers. Defendant Medical Providers subsequently sought No-Fault benefits from Plaintiff as the assignees of Defendant Salazar.

CPLR §3215(a) provides that a plaintiff may seek a default judgment against a defendant who has failed to appear, plead, or proceed to trial. An application for a default judgment must include: (1) proof of service of the summons and complaint; (2) proof of the merits of the claim; and (3) proof of the default (*see* CPLR §3215[f]). Plaintiff has submitted proof of service of the summons and complaint, proof of the facts constituting the claim and proof of Defendants’ failure to answer or appear in this action (*see* §CPLR 3215; *see also, Atlantic Cas. Ins. Co. v RJNJ Services, Inc.*, 89 AD3d 649 [2nd Dept 2011]). Defendants have not answered, or appeared in this action, and did not oppose Plaintiff’s default motion. Accordingly, Plaintiff’s motion for a default judgment is granted.

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<sup>1</sup> Plaintiff filed a stipulation of discontinuance as to Defendant Town of Hancock Volunteer Ambulance Corps, P.C. on May 8, 2019.

Further, regardless of Defendant Salazar's default, Plaintiff's motion for a default judgment would be granted as Defendant Salazar failed to appear for properly noticed independent medical examinations ("IMEs"). Defendant Salazar was mailed an Independent Medical Examination notice and an affirmation dated May 8, 2018, and when she failed to appear, a second notice of appointment was sent on May 24, 2018. Defendant Salazar failed to report on both occasions to the scheduled examinations.

The failure to appear for IMEs requested by the insurer "when, and as often as, [it] may reasonably require" (11 NYCRR § 65-1.1) is a breach of a condition precedent to coverage under the No-Fault policy, and therefore fits squarely within the exception to the preclusion doctrine, as set forth in *Central Gen. Hosp. v Chubb Group of Ins. Cos.* (90 NY2d 195, 681 NE2d 413, 659 NYS2d 246 [1997]). Plaintiff submitted documentary evidence including IME scheduling letters and supporting affidavits in support of its claim that Defendant Salazar failed to appear for properly scheduled IMEs on multiple occasions. Accordingly, Plaintiff has demonstrated its entitlement to a default judgment as to Defendant Salazar (*see PV Holding Corp. v American Neurology Servs., P.C.*, 2019 NY Slip Op 31807[U]).

Accordingly, it is

ORDERED that Plaintiff's motion for default judgment against Defendants Citimedical, PLLC, Catskill Regional Medical Center, Gen Cel Diagnostics, Lenox Hill Radiology and Medical Imaging Associates, P.C., Optimum Health Acupuncture, P.C., Spinecare NYC Orthopedics, Precise Pain Medicine, LLC, Arden Kaisman, M.D., P.C., MND Chiropractic P.C., All Borough Chiropractic, P.C., Dianon Systems, Inc., Emu Surgical Center, LLC, Solomon Halioua, M.D., Seong Hoon Moon, D.P.T., and Leonela Salazar is granted without opposition; and it is further

ORDERED that the branch of Plaintiff's motion that seeks default judgment in Plaintiff's favor on the first, second and third causes of action of the complaint and a declaratory judgment with respect to the subject matter of that cause of action is granted; and it is further

ADJUDGED and DECLARED that Plaintiff owes no duty to pay No-Fault claims with respect to the September 4, 2017 collision referenced in the complaint; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of Plaintiff in the sum of costs and disbursements, as taxed by the Clerk upon the submission of an appropriate bill of costs.

4/28/2020  
DATE

  
HON. SHAWN T. KELLY  
J.S.C.  
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SHAWN T. KELLY, J.S.C.

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION  OTHER

APPLICATION:  GRANTED  SETTLE ORDER  SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE