

**American Tr. Ins. Co. v Advanced Comprehensive Lab.**

2021 NY Slip Op 31262(U)

April 14, 2021

Supreme Court, New York County

Docket Number: 152469/2020

Judge: Arthur F. Engoron

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM**

*Justice*

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

ADVANCED COMPREHENSIVE LABORATORY, ALL BEST TRADING INC, ALL BODY HEALING SUPPLIES LLC, ARON ROVNER MD, PLLC, AZCARE INC., BIG APPLE MED EQUIPMENT INC., CENTRAL SUPPLIES OF NY CORP, COUNTY LINE PHARMACY, CUSTOM RX PHARMACY LLC, DYNAMIC SURGERY CENTER LLC, ELMWOOD PARK MEDICAL GROUP PC, FRANK SAUCHELLI, HEALTHPLUS SURGERY CENTER, LLC, ICONIC WELLNESS SURGICAL SERVICES LLC, LONG ISLAND NY ACUPUNCTURE P.C., METRO PAIN SPECIALISTS, P.C., MIISUPPLY, LLC, MOLNAR MEDICAL SERVICES PC, NEW YORK PRESBYTERIAN AMBULANCE, OPTIMUM HEALTH CHIROPRACTIC PLLC, PREMIER ANESTHESIA ASSOCIATES PA, PRIMAVERA ACUPUNCTURE P.C., PRIMAVERA PHYSICAL THERAPY, P.C., RAPID IMAGING CORP, SADDLE BROOK MUA, LLC, SHORE PARKWAY CHIROPRACTIC PC, SPRUCE MEDICAL & DIAGNOSTIC P.C, WELLNESS PHYSICAL THERAPY REHABILITATION PLLC, WESTCHESTER RADIOLOGY & IMAGING PC

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 63, 64, 65, 66, 67, 68, 69, 70, 71

were read on this motion to/for JUDGMENT - DEFAULT.

**DECISION + ORDER ON MOTION**

Upon the foregoing documents and for the reasons stated hereinbelow, the instant motion by plaintiff, American Transit Insurance Company, pursuant to CPLR 3215, for a default judgment against defendants is granted in part, on the merits and on default, and denied in part, solely as moot.

Background

Plaintiff, American Transit Insurance Company, issued an insurance policy (number BC809176) that was in effect on February 8, 2019, when non-party Ashlean Kaye (“Kaye”) was allegedly injured in a motor vehicle accident. Kaye submitted a claim (number 1051130-01) to plaintiff under the subject insurance policy. Kaye sought medical treatment and/or services from

defendants, namely, Advanced Comprehensive Laboratory; All Best Trading Inc; All Body Healing Supplies LLC; Aron Rovner MD, PLLC; Azcare Inc.; Big Apple Med Equipment Inc.; Central Supplies of NY Corp; County Line Pharmacy; Custom Rx Pharmacy LLC; Dynamic Surgery Center LLC; Elmwood Park Medical Group PC; Frank Sauchelli, MD; Healthplus Surgery Center, LLC; Iconic Wellness Surgical Services LLC; Long Island NY Acupuncture P.C.; Metro Pain Specialists, P.C.; MIISupply, LLC; Molnar Medical Services PC; New York Presbyterian Ambulance; Optimum Health Chiropractic PLLC; Premier Anesthesia Associates PA; Primavera Acupuncture P.C.; Primavera Physical Therapy, P.C.; Rapid Imaging Corp; Saddle Brook MUA, LLC; Shore Parkway Chiropractic PC; Spruce Medical & Diagnostic P.C.; Wellness Physical Therapy Rehabilitation PLLC; and Westchester Radiology & Imaging PC. Kaye assigned her right to collect No-Fault benefits to the medical provider defendants, who submitted claims for reimbursement to plaintiff. Plaintiff investigated the subject claims, the subject alleged accident, and Kaye's alleged injuries and concluded that said alleged injuries did not arise out of an event that the subject insurance policy covered. Thus, plaintiff disclaimed coverage. (NYSCEF Doc. 1.)

On February 21, 2020, plaintiff commenced the instant action, seeking a judgment (1) declaring that there are no No-Fault benefits for claims that defendants have submitted or will submit for services allegedly provided to Kaye under the subject insurance policy arising out of the subject alleged accident; and (2) awarding costs and disbursements to plaintiff (NYSCEF Doc. 1, at 17).

On March 22, 2020, defendant Big Apple Med Equipment, Inc. answered the instant complaint with various admissions, denials, and forty Affirmative Defenses (NYSCEF Doc. 5).

On May 15, 2020, defendant Central Supplies of New York Corp answered the instant complaint with various admissions, denials, sixteen Affirmative Defenses, and three Counter-Claims (essentially for attorney's fees) (NYSCEF Doc. 50). On May 27, 2020, plaintiff replied to said Counter-Claims (NYSCEF Documents 51 and 56).

On or about June 16, 2020, defendants Metro Pain Specialists, P.C.; Primavera Acupuncture P.C.; Primavera Physical Therapy, P.C.; and Rapid Imaging Corp jointly answered the complaint with various admissions, denials, and twenty-three Affirmative Defenses (NYSCEF Doc. 52).

On July 6, 2020, defendant Iconic Wellness Surgical Services, LLC answered the instant complaint with various denials, thirty-eight Affirmative Defenses; and four Counter-Claims (essentially for attorney's fees, costs, and disbursements) (NYSCEF Doc. 54). Also on July 6, 2020, plaintiff replied to said Counter-Claims (NYSCEF Doc. 55).

On July 10, 2020 defendant Shore Parkway Chiropractic, P.C. answered the instant complaint with various admissions, denials, thirty Affirmative Defenses, and a Counter-Claim (NYSCEF Doc. 57). On July 21, 2020, plaintiff replied to said Counter-Claims (NYSCEF Doc. 59).

On August 12, 2020, defendants Aron Rovner, MD, PLLC; Central Supplies of NY Corp.; County Line Pharmacy; Metro Pain Specialists, P.C.; Primavera Physical Therapy, P.C.; and Westchester Radiology & Imaging, P.C. jointly answered the instant complaint with various admissions, denials, and forty Affirmative Defenses (NYSCEF Doc. 60).

Pursuant to a stipulation dated October 29, 2020, plaintiff discontinued the instant action with prejudice as against defendant Frank Sauchelli, MD, only (NYSCEF Doc. 61).

Plaintiff now moves, pursuant to CPLR 3215(a), for a default judgment as against defendants Advanced Comprehensive Laboratory; All Best Trading Inc; All Body Healing Supplies LLC; Azcare Inc.; Custom Rx Pharmacy LLC; Dynamic Surgery Center LLC; Elmwood Park Medical Group PC; Frank Sauchelli, MD; Healthplus Surgery Center, LLC; Long Island NY Acupuncture P.C; MIISupply, LLC; Molnar Medical Services PC; New York Presbyterian Ambulance; Optimum Health Chiropractic PLLC; Premier Anesthesia Associates PA; Saddle Brook MUA, LLC; Spruce Medical & Diagnostic P.C.; and Wellness Physical Therapy Rehabilitation PLLC, only (NYSCEF Doc. 63).

Pursuant to a stipulation dated January 14, 2021, plaintiff discontinued the instant action with prejudice as against defendant County Line Pharmacy, only (NYSCEF Doc. 72).

Pursuant to a stipulation dated January 14, 2021, plaintiff discontinued the instant action with prejudice as against defendant Big Apple Med Equipment Inc., only (NYSCEF Doc. 73).

#### Discussion

Plaintiff has established that it is entitled to a default judgment against defendants Advanced Comprehensive Laboratory; All Best Trading Inc; All Body Healing Supplies LLC; Azcare Inc.; Custom Rx Pharmacy LLC; Dynamic Surgery Center LLC; Elmwood Park Medical Group PC; Healthplus Surgery Center, LLC; Long Island NY Acupuncture P.C; MIISupply, LLC; Molnar Medical Services PC; New York Presbyterian Ambulance; Optimum Health Chiropractic PLLC; Premier Anesthesia Associates PA; Saddle Brook MUA, LLC; Spruce Medical & Diagnostic P.C.; and Wellness Physical Therapy Rehabilitation PLLC (“the defaulting defendants”) by complying with CPLR 3215(f) and (g) by submitting the following, among other documents: copies of the subject pleadings (NYSCEF Doc. 67); copies of the subject affidavits of service and CPLR 3215(g) notices (NYSCEF Doc. 66); and the affidavit of merit of Uriel McLeish, a claim representative with plaintiff, which makes out a prima facie case for relief (NYSCEF Doc. 65).

To date, the defaulting defendants have failed to answer the instant complaint and/or oppose or otherwise respond to the instant motion, and their time to do so has expired.

Plaintiff is not entitled to a default judgment against defendant Frank Sauchelli, MD pursuant to the October 29, 2020 stipulation discontinuing the instant action with prejudice as against that defendant, only (NYSCEF Doc. 61).

Therefore, this Court will grant plaintiff’s motion for a default judgment as against the defaulting defendants, only.

#### Conclusion

Thus, for the reasons stated hereinabove, the instant motion by plaintiff, American Transit Insurance Company, pursuant to CPLR 3215, for a default judgment is hereby granted, on the

merits and on default as against defendants Advanced Comprehensive Laboratory; All Best Trading Inc; All Body Healing Supplies LLC; Azcare Inc.; Custom Rx Pharmacy LLC; Dynamic Surgery Center LLC; Elmwood Park Medical Group PC; Healthplus Surgery Center, LLC; Long Island NY Acupuncture P.C; MIISupply, LLC; Molnar Medical Services PC; New York Presbyterian Ambulance; Optimum Health Chiropractic PLLC; Premier Anesthesia Associates PA; Saddle Brook MUA, LLC; Spruce Medical & Diagnostic P.C.; and Wellness Physical Therapy Rehabilitation PLLC (“the defaulting defendants”) and is hereby denied, solely as moot pursuant to the October 29, 2020 stipulation of discontinuance (NYSCEF Doc. 61), as against defendant Frank Sauchelli, MD.

Accordingly, the Clerk is hereby directed to enter judgment (1) declaring that there are no No-Fault benefits for claims that the defaulting defendants have submitted or will submit for services allegedly provided to non-party Ashlean Kaye under the subject insurance policy (number 1051130-01) arising out of the alleged February 8, 2019 accident; and (2) awarding costs and disbursements to plaintiff.

The Court requests that plaintiff and the answering, non-discontinued defendants, namely, Aron Rovner MD, PLLC; Central Supplies of NY Corp; Iconic Wellness Surgical Services LLC; Metro Pain Specialists, P.C.; Primavera Acupuncture P.C.; Primavera Physical Therapy, P.C.; Rapid Imaging Corp; Shore Parkway Chiropractic PC; and Westchester Radiology & Imaging PC, please contact our part clerk, Margie Ramos-Ciancio, via email at [mciancio@nycourts.gov](mailto:mciancio@nycourts.gov) to schedule a preliminary conference, remembering to copy all remaining parties.

  
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