

**Unitrin Advantage Ins. Co. v All Med. Digital  
Diagnostics, PC**

2021 NY Slip Op 31597(U)

May 11, 2021

Supreme Court, New York County

Docket Number: 151696/2019

Judge: W. Franc Perry

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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. W. FRANC PERRY** PART IAS MOTION 23EFM

*Justice*

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INDEX NO. 151696/2019

UNITRIN ADVANTAGE INSURANCE COMPANY,

MOTION DATE N/A

Plaintiff,

MOTION SEQ. NO. 003

- v -

ALL MEDICAL DIGITAL DIAGNOSTICS, PC, COLUMBUS IMAGING, LLC, DR. BRUCE JACOBSON DC, P.C., EXCEL SRUGERY CENTER, LLC, FIRSTCARE MEDICAL EQUIPMENT LLC, FLATLANDS MEDICAL CARE, PC, MICA REHAB PT, PC, NJ NEURO AND PAIN PC, TOTAL PSYCHIATRIC MEDICAL SERVICES, PC, VANESSA PEREZ, JESSICA MOYE

**DECISION + ORDER ON MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62

were read on this motion to/for

JUDGMENT - DEFAULT

Plaintiff Unitrin Advantage Insurance Company ("Plaintiff") brings this action seeking a declaratory judgment that it owes no duty to pay no fault benefits relating to a June 19, 2015 motor vehicle collision involving two of its insureds, Vanessa Perez and Jessica Moye ("Claimants").<sup>1</sup> In motion sequence 003, Plaintiff moves for a default judgment against NJ Neuro and Pain, PC ("Defendant"), seeking a declaration that Plaintiff has no duty to pay no fault claims to Defendant based on Defendant's failure to appear at properly scheduled examinations under oath ("EUOs"). The motion has been submitted unopposed.

<sup>1</sup> By decision and order dated September 10, 2019, this court granted Plaintiff's motion sequence 001, granting default judgment against Defendants All Medical Digital Diagnostics, P.C., Columbus Imaging, LLC, Dr. Bruce Jacobson DC P.C., Excel Surgery Center LLC, Firstcare Medical Equipment LLC, Flatlands Medical Care, P.C., Mica Rehab PT, P.C., and Total Psychiatric Medical Services, P.C. (NYSCEF Doc No. 37.)

### Background

Defendants/Claimants Jessica Moye and Vanessa Perez were allegedly involved in a motor vehicle accident on June 18, 2015. (NYSCEF Doc No. 1, Complaint, at ¶ 13.) Claimants were transported to the hospital and allegedly sought medical treatment from Defendant, assigning their rights to collect no fault benefits thereto. (*Id.*)

Plaintiff alleges that the following circumstances raised a strong possibility that the treatment received was not causally related to the accident:

- The insurance policy became effective only two months prior to the collision.
- The Claimants were alleging identical injuries and were receiving identical treatment regimens.
- The Claimants' treating physician is being investigated by the National Insurance Crime Bureau.
- The first No-Fault bills submitted on behalf of the Claimants was for psychology treatment.

(*Id.* at ¶ 18.)

Plaintiff then requested, and the Claimants did attend, EUOs on September 24 and October 23, 2015. (NYSCEF Doc No. 53, Transcripts.) Plaintiff alleges that the testimony of both Claimants raised further questions about the propriety of the medical treatment received in relation to the accident. (NYSCEF Doc No. 51 at 4.) Plaintiff alleges that it then requested Defendant to attend EUOs for further clarification and that Defendant failed to attend. Plaintiff now moves for default judgment against Defendant.

### Discussion

On a motion for leave to enter a default judgment, a plaintiff is required to submit: (1) proof of service of the summons and complaint on the defendant; (2) proof of the merits of the subject claims; and (3) proof of the defendant's default in answering or appearing. (*SMROF II 2012-1 Tr. v Tella*, 139 AD3d 599 [1st Dept 2016].) "Given that in default proceedings the defendant has failed to appear and the plaintiff does not have the benefit of discovery, the affidavit or verified

complaint need only allege enough facts to enable a court to determine that a viable cause of action exists.” (*Bianchi v. Empire City Subway Co.*, 2016 WL 1083912 [Sup Ct, New York County 2016], quoting *Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 [2003].)

This court granted Plaintiff’s motion sequence 002 on December 13, 2019, granting Plaintiff an additional 120 days from the date of the decision to effect service. (NYSCEF Doc No. 45.) Thus, Plaintiff was to have served Defendant by April 11, 2020. The court’s decision was based on Plaintiff’s allegation that Defendant could not be located at its last known business address: 1155 West Chestnut Street, Union, New Jersey 07083. (NYSCEF Doc No. 40 at ¶ 8; *see also* NYSCEF Doc No. 42, affidavit of nonservice.)

On January 14, 2020, Plaintiff electronically filed an affidavit of service dated January 10, 2020. (NYSCEF Doc No. 48.)<sup>2</sup> This affidavit states that the process server attempted service on “NJ Neuro, Dr. Bruce Jacobson, Owner” at 200 Sterling Boulevard, Englewood, New Jersey 07631 by visiting that address twice, before resorting to nail-and-mail service. Notably, Dr. Bruce Jacobson DC, P.C. was a former Defendant in this case and default has already been entered against him. (*See* NYSCEF Doc No. 37.) However, nowhere in the record does Plaintiff demonstrate the relationship between Dr. Jacobson and Defendant. Additionally, nail-and-mail alternative service, pursuant to CPLR 308, is only applicable to defendants who are natural persons. (*Lakeside Concrete Corp. v Pine Hollow Bldg. Corp.*, 104 AD2d 551 [2d Dept 1984].) Here, Defendant is a professional corporation. As such, Plaintiff has not demonstrated proper service upon Defendant and it is hereby

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<sup>2</sup> Notably, this is the same affidavit of service submitted with the current motion for default. (NYSCEF Doc No. 55.)

ORDERED that Plaintiff's motion sequence 003 for default judgment against Defendant NJ Neuro and Pain, PC, is hereby denied.

05/11/21

DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: