

<b>Country-Wide Ins. Co. v Daniels</b>
2022 NY Slip Op 30713(U)
March 4, 2022
Supreme Court, New York County
Docket Number: Index No. 653106/2021
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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COUNTRY-WIDE INSURANCE COMPANY,
Plaintiff,

INDEX NO. 653106/2021
MOTION DATE 02/22/2022
MOTION SEQ. NO. 001

- v -

ERIC DANIELS, NEWYORK-PRESBYTERIAN/BROOKLYN
METHODIST D/B/A THE NEW YORK METHODIST
HOSPITAL, PARK SLOPE EMERGENCY PHYSICIAN
SERVICES, P.C.,DR. LAXMIDHAR DIWAN MD, ARIES
CHIROPRACTIC P.C.,FOREST HILLS MEDICAL
P.C.,PHOENIX MEDICAL SERVICES, P.C.,ADVANCED
SURGERY CENTER LLC,GALINA GROYSMAN, FPA
HOSPITAL BASED D/B/A MOUNT SINAI PATHOLOGY
OUTREACH, UNIVERSAL DIAGNOSTICS, LLC,RAHWAY
PATHOLOGY, PA, BORIS RIPA MEDICAL, P.C.,MOBILITY
ORTHO SUPPLY CORPORATION

DECISION + ORDER ON
MOTION

Defendant.

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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

were read on this motion to/for JUDGMENT - DEFAULT

BACKGROUND

This action arises from an automobile accident on April 8, 2016 wherein Eric Daniels
(ED) was allegedly injured while in a vehicle insured by plaintiff. ED filed a claim with plaintiff
as a purported injured person under an insurance policy, number BS 9464534 16, issued by
plaintiff.

Plaintiff commenced this action on or about May 11, 2021, seeking a declaratory
judgment against ED, New York-Presbyterian/Brooklyn Methodist D/B/A The New York
Methodist Hospital, Park Slope Emergency Physician Services, P.C., Dr. Laxmidhar Diwan Md,
Aries Chiropractic P.C., Forest Hills Medical P.C., Phoenix Medical Services, P.C., Advanced

Surgery Center LLC, Galina Groysman, FPA Hospital Based D/B/A Mount Sinai Pathology Outreach, Universal Diagnostics, LLC, Rahway Pathology, Pa, Boris Ripa Medical, P.C., and Mobility Ortho Supply Corporation, based upon policy exhaustion.

On June 28, 2021, ARIES Chiropractic PC, Galina Groysman and Boris Ripa Medical PC filed an answer. On July 2, 2021, the action was discontinued as against Dr. Laxmidhar diwan, MD pursuant to stipulation.

### **PENDING MOTION**

In this declaratory judgment action, plaintiff moves, pursuant to CPLR §3215, for a default judgment against defendants ED, New York-Presbyterian/Brooklyn Methodist D/B/A The New York Methodist Hospital, Park Slope Emergency Physician Services, P.C., Forest Hills Medical P.C., Phoenix Medical Services, P.C., Advanced Surgery Center LLC, FPA Hospital Based D/B/A Mount Sinai Pathology Outreach, Universal Diagnostics, LLC, Rahway Pathology, Pa, and Mobility Ortho Supply Corporation. These defendants have failed to appear or submit opposition.

### **DISCUSSION**

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “On a motion for leave to enter a default judgment pursuant to CPLR §3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

In support of the motion plaintiff submits a statement of material facts (NYSCEF Doc no. 22), the affirmation of Carl J. Gedeopn, Esq. (NYSCEF Doc no 23), a copy of the summons and

complaint (NYSCEF Doc no 24), affidavits of service on each defendant (NYSCEF Doc no 25), notice pursuant to CPLR 3215(g) (NYSCEF Doc no 26), the declaration page from the insurance policy, establishing a policy limit of \$50,000.00 (NYSCEF Doc. No 27), denial of claim form (NYSCEF Doc no 28), affidavit of Jessica Mena-Sibrian, a No-Fault Litigation/Arbitration Supervisor, employed by plaintiff (NYSCEF Doc no. 29), and a copy of the payment ledger (NYSCEF Doc. No 30).

Plaintiff does not specifically identify any pending arbitration or litigation between the parties, although they seek a permanent stay of the same. Nor does plaintiff affirmatively state there is no current pending arbitration or litigation between the parties. Plaintiff also has failed to notify counsel for any named defendant that may have appeared on their behalf in a related action. Although not technically required by statute, when a defendant is known to have been represented in a pending related action, the better practice is to serve a courtesy copy of the motion on the attorney representing the other party in a related proceeding. For these reasons, plaintiff's motion for a default judgment is denied without prejudice to renewal, on notice to counsel for any defendant and an affidavit listing any pending arbitration or litigation, or a statement affirming that none exists.

**CONCLUSION**

Wherefore, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against defendants Eric Daniels, New York-Presbyterian/Brooklyn Methodist D/B/A The New York Methodist Hospital, Park Slope Emergency Physician Services, P.C., Forest Hills Medical P.C., Phoenix Medical Services, P.C., Advanced Surgery Center LLC, FPA Hospital Based D/B/A Mount Sinai

Pathology Outreach, Universal Diagnostics, LLC, Rahway Pathology, Pa, and Mobility Ortho Supply Corporation. is denied without prejudice; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on all defendants the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh)); and it is further

This constitutes the decision and order of the court.



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3/4/2022  
DATE

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SABRINA KRAUS, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE