

<b>American Tr. Ins. Co. v Crispin</b>
2022 NY Slip Op 31204(U)
April 7, 2022
Supreme Court, New York County
Docket Number: Index No. 161397/2020
Judge: Sabrina Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

<b>PRESENT:</b>	<u>HON. SABRINA KRAUS</u>	<b>PART</b>	<b>57TR</b>
	<i>Justice</i>		
-----X		<b>INDEX NO.</b>	<u>161397/2020</u>
AMERICAN TRANSIT INSURANCE COMPANY,		<b>MOTION DATE</b>	<u>03/18/2022</u>
	Plaintiff,	<b>MOTION SEQ. NO.</b>	<u>001</u>

- v -

JANCARLOS CRISPIN, ACCESS CARE PT P.C., ATLAS PT, P.C., C&M CHIROPRACTIC, P.C., CENTER FOR NEURORESTORATIVE MEDICINE, JEFFERSON HEALTHCARE SUPPLIES LLC, MDJ CHIROPRACTIC WELLNESS P.C., PI CHIROPRACTIC P.C., WELCOME ACUPUNCTURE P.C.

**DECISION + ORDER ON MOTION**

Defendant.

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19

were read on this motion to/for JUDGMENT - DECLARATORY

**BACKGROUND**

This action arises from an automobile accident on December 20, 2018 wherein JanCarlos Crispin (JC) was allegedly injured in a vehicle insured by plaintiff. JC filed a claim with plaintiff as a purported injured person under an insurance policy, number 1047017-02, issued by plaintiff.

Plaintiff commenced this action on or about December 31, 2020, seeking a declaratory judgment against JC, Access Care Pt P.C., Atlas Pt, P.C., C&M Chiropractic, P.C., Center For Neurorestorative Medicine, Jefferson Healthcare Supplies LLC, MDJ Chiropractic Wellness P.C., PI Chiropractic P.C., Welcome Acupuncture P.C. alleging that JC had failed to appear for an Independent Medical Examination.

JC, Access Care Pt P.C., Atlas Pt, P.C., C&M Chiropractic, P.C., Center For Neurorestorative Medicine, Jefferson Healthcare Supplies LLC, MDJ Chiropractic Wellness P.C., PI Chiropractic P.C., Welcome Acupuncture P.C. have failed to appear or file an answer

and the time within which defendants may answer or otherwise move to respond to said complaint has expired and has not been extended.

### **PENDING MOTION**

On March 18, 2022, plaintiff moved, pursuant to CPLR §3215, for a default judgment against defendants JC, Access Care Pt P.C., Atlas Pt, P.C., C&M Chiropractic, P.C., Center For Neurorestorative Medicine, Jefferson Healthcare Supplies LLC, MDJ Chiropractic Wellness P.C., PI Chiropractic P.C., Welcome Acupuncture P.C.

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).

Plaintiff submits a Request for Judicial Intervention in support of the motion for a default judgment (NYSCEF Doc 19). The section of the RJI entitled “Related Cases” is blank. However, a search of court records reveals a pending action, a Kings County Civil Court, under index CV-700747/20, involving plaintiff and MDJ Chiropractic Wellness P.C., a defendant herein, where MDJ Chiropractic Wellness P.C. is represented by counsel. Counsel in that action was not served with notice of this action or of this motion.

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.

Further, although plaintiff seeks a permanent stay on pending arbitration or litigation between the parties, plaintiff fails to specifically identify any pending arbitration or litigation between the parties. Nor does plaintiff affirmatively state there is no current pending arbitration or litigation between the parties. 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**

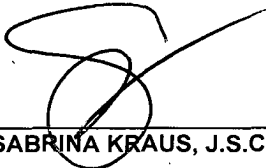
Wherefore, it is hereby

ORDERED that plaintiff's motion seeking a default judgment against defendants JC, Access Care Pt P.C., Atlas Pt, P.C., C&M Chiropractic, P.C., Center For Neurorestorative Medicine, Jefferson Healthcare Supplies LLC, MDJ Chiropractic Wellness P.C., PI Chiropractic P.C., Welcome Acupuncture P.C. 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, including the Korsunskiy Legal Group at 1674 East 22<sup>nd</sup> Street, 2<sup>nd</sup> Floor, Brooklyn, New York 11229, and on 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.

<u>4/7/2022</u> DATE			 SABRINA KRAUS, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/RÉASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE