

**Hereford Ins. Co. v 21 Century Chiropractic Care**

2022 NY Slip Op 33557(U)

October 17, 2022

Supreme Court, New York County

Docket Number: Index No. 150314/2022

Judge: Mary V. Rosado

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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. MARY V. ROSADO

PART 33

Justice

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INDEX NO. 150314/2022

HEREFORD INSURANCE COMPANY,

MOTION DATE 06/08/2022

Plaintiff,

MOTION SEQ. NO. 001

- v -

21 CENTURY CHIROPRACTIC CARE, ALL CITY FAMILY HEALTHCARE, AMERIPATH NY, ANDREW HALL, CITYMD URGENT CARE, COMPREHENSIVE MRI OF NEW YORK, CROSS BAY ORTHOPEDIC SURGERY, CVAP MEDICAL P.C., D&D DRUGS, INC., DRAK MEDICAL EQUIPMENT INC., EAST SIDE PRIMARY MEDICAL CARE, PC, ELENA BORISOVNA STYBEL, EMOTE MEDICAL SERVICES, EXACT ORTHOMED, INC., EZ RELIEF MEDICAL, PC, FIFTH AVENUE SURGERY CENTER, FLORAL PARK DRUGS INC., GALAXY RX INC., INTERVENTIONAL PHYSICAL MEDICINE & REHAB MEDICINE OF NEW YORK PLLC, JR MEDICAL PC, LENCO DIAGNOSTIC LABORATORY, MACINTOSH MEDICAL PC, MASPETH MED SUPPLY, INC., MIKLOS LOSONCZY, MJG MEDICAL SERVICES PC, MULTIMED SUPPLY, INC., NYC BEST SUPPLY, INC., OLD STAR INC., OPP RAPID DIAGNOSTIC INC., OZONE RX INC., PRIMAVERA PHYSICAL THERAPY, P.C., REFUAH DIAGNOSTIC LLC, ROCKAWAY ASC DEVELOPMENT, LLC, RN SUPPLY INC., S&N NYC INC., SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, SKY RADIOLOGY P.C., ST. BARNABAS HOSPITAL, TOTAL ANESTHESIA PROVIDER, PC, WELLCARE NEUROLOGY PLLC, RACHEL STEPNEY, VERONICA STEPNEY

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 72, 73, 75, 76, 79, 82

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, and there being no opposition, Plaintiff Hereford Insurance Company's ("Plaintiff") motion for default judgment is granted.

This action arises out of alleged injuries sustained on May 9, 2021 by Defendants Rachel Stepney ("R. Stepney") and Veronic Stepney ("V. Stepney") who were passengers in a taxi cab

insured by Plaintiff when the insured cab allegedly hit a second cab (NYSCEF Doc. 1 at ¶ 44). After investigation into the incident, Plaintiff alleged a founded belief that the alleged injuries are not causally related to an insured accident (*id.* at ¶ 53).

In particular, Plaintiff points to discrepancies between both R. Stepney's and V. Stepney's examination under oath (EUO) testimony. For instance, R. Stepney placed the accident at 3:00 p.m. while V. Stepney placed the accident at 6:00 p.m., R. Stepney claims they were in a green taxi which hit a yellow taxi while V. Stepney claims they were in a yellow taxi which hit a green taxi, when asked how they were referred to a law firm, both R. Stepney and V. Stepney gave different answers, there was no police report filed of the accident, and although the impact of the accident was allegedly minimal there has been extensive medical treatment worth thousands of dollars (*id.*). Further, Plaintiff alleges that both R. Stepney and V. Stepney failed to execute and return their EUO transcripts (*id.* at ¶ 55). Based on these facts, on January 11, 2022, Plaintiff filed its Complaint seeking declaratory judgment that it is under no obligation to provide no-fault benefits to R. Stepney, V. Stepney, or any of their assignees (*id.*).

Defendants Cross Bay Orthopedic Surgery, Maspeth Med Supply Inc, Multimed Supply Inc, NYC Best Medical Supply Inc, Ozone RX Inc, 21 Century Chiropractic Care, Galaxy RX Inc., Floral Park Drugs Inc., All City Family Health Care Center Inc., Primavera Physical Therapy, P.C., Elena Borisovna Stybel, M.D., Emote Medical Services, Miklos F. Losonczy, MD, Rockaway ASC Development, LLC, Drak Medical Equipment Inc., and D&D Drugs, Inc. have all answered Plaintiff's Complaint (NYSCEF Docs. 46, 49, 54, 69, 77, 80, and 90). Stipulations of discontinuance have been executed between Plaintiff and defendants Macintosh Medical, P.C., Ameripath NY, and Comprehensive MRI of New York (NYSCEF Docs. 51, 74, and 93). However,

the remainder of the defendants have not filed an Answer or otherwise appeared. Therefore, Plaintiff filed the instant motion for default judgment on May 23, 2022 (NYSCEF Doc. 55).

An applicant for default judgment against a defendant must submit: (i) proof of service of the summons and complaint, (ii) proof of the facts constituting the claim, and (iii) proof of the defaulter's failure to appear (*PV Holding Corp v AB Quality Health Supply Corp*, 189 AD3d 645 [1st Dept 2020]). Affidavits submitted in support of default judgment only need to allege enough facts to allow a court to assess if a viable cause of action exists (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). The Court is mindful that "defaulters are deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them (*Al Fayed v Barak*, 39 AD3d 371, 372 [1st Dept 2007]). Default judgment is appropriate where, the conditions of CPLR 3215 have been satisfied and an insurer disclaims coverage on a founded belief that alleged injuries did not arise out of a reported accident (*State Farm Mutual Automobile Insurance Company v AK Global Supply Corp.*, 203 AD3d 556 [1st Dept 2022]). Further, failure to subscribe examination under oath testimony in accordance with 11 N.Y.C.R.R. 65-1.1 which is a condition precedent to obtain coverage can result in loss of coverage (*Kemper Independent Ins. Co. v Cornerstone Chiropractic, P.C.*, 185 AD3d 468, 468-469 [1st Dept 2020]).

The Court is satisfied that Plaintiff has satisfied the service requirements of CPLR 3215 (NYSCEF Docs. 55, 62, and 64). Further, Plaintiff has shown proof of the facts constituting its claim in compliance with CPLR 3215(f) where, as here, Plaintiff has provided the affidavit of the adjuster who is handling this claim, the EUO transcripts and correspondences (NYSCEF Doc. 57, 59-60). Finally, Plaintiff has also provided a non-military affidavit for R. Stepney and V. Stepney (NYSCEF Doc. 63). Therefore, as defaulting parties are deemed to have admitted all factual

allegations and all reasonable inferences that flow from them, and Plaintiff has complied with CPLR 3215, default judgment is appropriate.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion for default judgment against Defendants Andrew Hall MD, CityMD Urgent Care, CVAP Medical P.C., East Side Primary Medical Care, PC, EZ Relief Medical, PC, Fifth Avenue Surgery Center, Interventional Physical Medicine & Rehab Medicine of New York PLLC, JR Medical PC, Lenco Diagnostic Laboratory, MJG Medical Service PC, Old Star Inc., Opp Rapid Diagnostic Inc., Refuah Diagnostic LLC, RN Supply Inc., S&N NYC Inc., Sedation Vacation Perioperative Medicine, PLLC, Sky Radiology P.C., St. Barnabas Hospital, Total Anesthesia Provider, PC, Wellcare Neurology PLLC, Rachel Stepney, and Veronic Stepney, is granted; and it is further

ORDERED, ADJUDGED, and DECLARED that Rachel Stepney and Veronica Stepney breached a condition precedent to coverage as established by the no-fault regulation and the subject policy of insurance and accompanying no-fault endorsement by failing to subscribe their EUO transcripts; and it is further

ORDERED, ADJUDGED, and DECLARED that Rachel Stepney and Veronic Stepney's alleged injuries and any subsequent no-fault treatment submitted by Defendants Andrew Hall MD, CityMD Urgent Care, CVAP Medical P.C., East Side Primary Medical Care, PC, EZ Relief Medical, PC, Fifth Avenue Surgery Center, Interventional Physical Medicine & Rehab Medicine of New York PLLC, JR Medical PC, Lenco Diagnostic Laboratory, MJG Medical Service PC, Old Star Inc., Opp Rapid Diagnostic Inc., Refuah Diagnostic LLC, RN Supply Inc., S&N NYC Inc., Sedation Vacation Perioperative Medicine, PLLC, Sky Radiology P.C., St. Barnabas Hospital, Total Anesthesia Provider, PC, Wellcare Neurology PLLC, Rachel Stepney, and Veronic Stepney

were not causally related to the May 9, 2021 collision referenced in the Complaint (claim number 93875) and did not arise from an insured event; and it is further

ORDERED, ADJUDGED, and DECLARED that Plaintiff owes no duty to provide no-fault reimbursements to Defendants Andrew Hall MD, CityMD Urgent Care, CVAP Medical P.C., East Side Primary Medical Care, PC, EZ Relief Medical, PC, Fifth Avenue Surgery Center, Interventional Physical Medicine & Rehab Medicine of New York PLLC, JR Medical PC, Lenco Diagnostic Laboratory, MJG Medical Service PC, Old Star Inc., Opp Rapid Diagnostic Inc., Refuah Diagnostic LLC, RN Supply Inc., S&N NYC Inc., Sedation Vacation Perioperative Medicine, PLLC, Sky Radiology P.C., St. Barnabas Hospital, Total Anesthesia Provider, PC, Wellcare Neurology PLLC, Rachel Stepney and Veronica Stepney arising out of the alleged May 9, 2021 collision referenced in the Complaint (claim number 93875), as Rachel Stepney and Veronica Stepney breached a condition precedent to coverage as established by the subject policy of insurance and the accompanying no-fault endorsement and the no-fault regulation by failing to subscribe their EUO transcripts; and it is further

ORDERED, ADJUDGED, and DECLARED that Plaintiff, by reason of no coverage, is not required to pay any sums, monies, damages awards and benefits to Andrew Hall MD, CityMD Urgent Care, CVAP Medical P.C., East Side Primary Medical Care, PC, EZ Relief Medical, PC, Fifth Avenue Surgery Center, Interventional Physical Medicine & Rehab Medicine of New York PLLC, JR Medical PC, Lenco Diagnostic Laboratory, MJG Medical Service PC, Old Star Inc., Opp Rapid Diagnostic Inc., Refuah Diagnostic LLC, RN Supply Inc., S&N NYC Inc., Sedation Vacation Perioperative Medicine, PLLC, Sky Radiology P.C., St. Barnabas Hospital, Total Anesthesia Provider, PC, Wellcare Neurology PLLC, Rachel Stepney and Veronica Stepney arising out of the alleged May 9, 2021 collision referenced in the Complaint (claim number 93875),

including but not limited to mandatory personal injury protection, additional personal injury protection, bodily injury and property damage liability, and supplemental uninsured/underinsured motorist coverage; and it is further

ORDERED that the Clerk of the Court is directed to enter default judgment as against Andrew Hall MD, CityMD Urgent Care, CVAP Medical P.C., East Side Primary Medical Care, PC, EZ Relief Medical, PC, Fifth Avenue Surgery Center, Interventional Physical Medicine & Rehab Medicine of New York PLLC, JR Medical PC, Lenco Diagnostic Laboratory, MJG Medical Service PC, Old Star Inc., Opp Rapid Diagnostic Inc., Refuah Diagnostic LLC, RN Supply Inc., S&N NYC Inc., Sedation Vacation Perioperative Medicine, PLLC, Sky Radiology P.C., St. Barnabas Hospital, Total Anesthesia Provider, PC, Wellcare Neurology PLLC, Rachel Stepney and Veronica Stepney; and it is further

ORDERED that this action is severed and shall proceed against the remaining defendants; and it is further

ORDERED that Plaintiff shall serve a copy of this decision order on all parties within seven (7) days of entry.

This constitutes the decision and order of the Court.

<u>10/17/2022</u> DATE	<u>Mary V Rosado</u> HON. MARY V. ROSADO, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	OTHER