

Government Empls. Ins. Co. v Altai Corp.

2023 NY Slip Op 30737(U)

March 14, 2023

Supreme Court, New York County

Docket Number: Index No. 157709/2022

Judge: Lori S. Sattler

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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. LORI S. SATTLER PART 02TR

Justice

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GOVERNMENT EMPLOYEES INSURANCE COMPANY,
INCLUDING ITS SUBSIDIARIES AND AFFILIATES, GEICO
GENERAL INSURANCE COMPANY, GEICO INDEMNITY
COMPANY AND GEICO CASUALTY COMPANY,

Plaintiff,

- v -

ALTAI CORPORATION D/B/A GET READY MED SUPPLY,
BDS DIAGNOSTIC CORP., BIOMED PHARMACY,
INC.,CARE EXPRESS PHARMACY, INC.,CHI CHINESE
ACUPUNCTURE, P.C.,CITIMED COMPLETE MEDICAL
CARE, P.C.,EAST SIDE PT, P.C.,ECLIPSE MEDICAL
RADIOLOGY, P.C.,EMOTE MEDICAL SERVICES,
P.C.,ERIC KENWORTHY, M.D., FAMILY HEALTH NP,
P.C.,FRESH POND MEDICAL SUPPLY, INC.,HARVEY
LIVTAN, M.D., IDEAL CARE PHARMACY, INC.,JOSEPH A.
RAIA, M.D., P.C.,KBJ MEDICAL PRACTICE, P.C.,NEW
YORK CITY FIRE DEPARTMENT EMS, NEW YORK
PHYSICAL THERAPY TOUCH, PLLC A/K/A NEW YORK PT
TOUCH, PLLC,NY UNION PHARMACY, INC.,ONE RX
CHEMIST, INC.,ORTHOSUPPLY112, INC.,PAL MEDICAL
SUPPLIES, INC.,PAIN RELIEF RX, INC.,PRANEVICIUS
MEDICAL, P.C.,PRISTINE RX CORP., ROSS FIALKOV,
D.C. A/K/A ROSS FIALKOV1849, SHALOM'S PHARMACY,
INC.,SHERNET BARRETT, N.P., SPINAL PAIN & REHAB
MEDICAL, P.C.,STAR OF N.Y. CHIROPRACTIC
DIAGNOSTIC, P.C.,STEP UP PHYSICAL THERAPY P.C.
A/K/A STEP UP PT, P.C.,WALMED EQUIPMENT,
LLC,WILKINS WILLIAMS MEDICAL, P.C.,YK MEDICAL,
PLLC,RICARDO ST. JEAN, LINDA HARRISON, MARLINE
BEAUBRUN

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 54, 55

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

In this action for a declaratory judgment, Plaintiffs Government Employees Insurance Company, et al. ("Plaintiffs"), move for default judgment against all defendants except for

**AMENDED DECISION + ORDER
ON MOTION**

Family Health NP, P.C., Ross Fialkov, D.C. a/k/a Ross Fialkov 1849, Shernet Barrett, N.P., Ricardo St. Jean, Linda Harrison and Marline Beaubrun. The motion was partially withdrawn by stipulation between Plaintiffs and defendants Ideal Care Pharmacy, Inc., Altai Corporation d/b/a Get Ready Med Supply, Emote Medical Services, P.C., and KBJ Medical Practice, P.C (NYSCEF Doc. Nos. 54, 55). The remaining defendants (“Non-Answering Defendants”) have neither appeared in this action nor answered the Complaint.

This action arises out of no-fault claims submitted in connection to an automobile accident that purportedly occurred on October 16, 2021. Ricardo St. Jean, Linda Harrison and Marline Beaubrun (“Claimants”) were occupants of a 2011 Toyota insured by Plaintiff that was involved in the accident on Avenue L, at the intersection East 101st Street in Brooklyn, New York (NYSCEF Doc. No. 1). According to the police report filed, the driver of the insured vehicle, non-party Oluwaseun Abetoya stated that he was parked in his car when it was sideswiped by a vehicle that fled from the scene (NYSCEF Doc. No. 20). The report notes that the other car was a sedan of an unknown make, model and color and only Defendant St. Jean alleged injuries at the scene (*id.*).

In an affidavit submitted by Plaintiffs’ claims adjustor, Kimberly Didden, she states that the legitimacy of the submitted claims was questioned based on several factors including: (1) the policy was issued close to the time of the loss; (2) only St. Jean alleged injuries at the scene; (3) the adverse vehicle fled and was never identified; and (4) the only damage to the insured vehicle was to the side mirror and despite this minor nature of the loss the Claimants had purportedly undergone significant medical treatment (NYSCEF Doc. No. 38). Based upon the above-cited factors, Plaintiffs sought timely examinations under oath (EUOs) pursuant to its rights under the

relevant policy and No-Fault Regulations. All three Claimants failed to appear on two or more instances (*id*).

Plaintiffs now move for a default judgment based on the Claimants failure to appear for the scheduled EUOs and their founded belief that the Claimants' injuries did not arise out of the accident. A party is entitled to default judgment pursuant to CPLR 3215 where it files proof of service of its Summons and Complaint, proof of the acts constituting its claim, and proof of default (CPLR 3215[f]; *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 [1st Dept 2016]). Here, Plaintiffs have properly filed proof of service of its summons and complaint upon Claimants and the Non-Answering Medical Defendants (NYSCEF Doc. No. 40), presented proof of the facts in support of its claim (NYSCEF Doc. Nos. 38, 41-44), and proof of default (NYSCEF Doc. No. 46).

11 NYCRR 65-1.1 requires that a No-Fault claimant fully comply with the terms of coverage in a No-Fault policy as a condition precedent to all claims against an insurer under that policy. A claimant's failure to submit to an EUO constitutes a breach of a condition precedent to coverage under a No-Fault policy and vitiates the policy (*Hertz Corp. v Active Care Med. Supply Corp.*, 124 AD3d 411 [1st Dept 2015]; *Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC*, 82 AD3d 559, 560 [1st Dept 2011]). A request for an EUO is timely when it is made within 15 days of the receipt of a medical provider claim (*Unitrin Direct Ins. Co. v Beckles*, 188 AD3d 620 [1st Dept 2020]), but can also be sought prior to receipt thereof (*Mapfre Ins. Co. of N.Y. v Manoo*, 140 AD3d 468, 469 [1st Dept 2016]).

Plaintiffs have demonstrated that the request for EUOs were timely made. Thus, under 11 NYCRR 65-1.1, Claimants have failed to comply with a condition precedent for coverage and judgment may be granted denying the claims. The Court further notes that Plaintiffs would also

have prevailed under a claim of founded belief having presented sufficient proof to support its claims the alleged injuries did not arise out a covered event. A No-Fault insurer seeking a declaratory judgment disclaiming coverage on the basis that the collision giving rise to No-Fault claims was intentionally caused or staged, or that the alleged injuries did not arise out of a covered event, must establish as a “fact or founded belief that the alleged injury does not arise out of an insured incident” (*Central Gen. Hosp. v Chubb Grp. Of Ins. Cos.*, 90 NY2d 195, 199 [1997]).

Accordingly, it is hereby,

ORDERED that the motion is granted as against the Non-Answering Defendants; and it is further ORDERED AND ADJUDGED that there is no No-Fault coverage for claims related to the alleged October 16, 2021 collision submitted by BDS DIAGNOSTIC CORP.; BIOMED PHARMACY, INC.; CARE EXPRESS PHARMACY, INC.; CHI CHINESE ACUPUNCTURE, P.C.; CITIMED COMPLETE MEDICAL CARE, P.C.; EAST SIDE PT, P.C.; ECLIPSE MEDICAL RADIOLOGY, P.C.; ERIC KENWORTHY, M.D., P.C.; FRESH POND MEDICAL SUPPLY, INC.; HARVEY LIVTAN, M.D.; JOSEPH A. RAIA, M.D., P.C.; NEW YORK CITY FIRE DEPARTMENT EMS; NEW YORK PHYSICAL THERAPY TOUCH, PLLC A/K/A NEW YORK PT TOUCH, PLLC; NY UNION PHARMACY, INC.; ONE RX CHEMIST, INC.; ORTHOSUPPLY112, INC.; PAL MEDICAL SUPPLIES, INC.; PAIN RELIEF RX, INC.; PRANEVICIUS MEDICAL, P.C.; PRISTINE RX CORP.; SHALOM'S PHARMACY, INC; SPINAL PAIN & REHAB MEDICAL, P.C.; STAR OF N.Y. CHIROPRACTIC DIAGNOSTIC, P.C.; STEP UP PHYSICAL THERAPY P.C. A/K/A STEP UP PT, P.C.; WALMED EQUIPMENT, LLC; WILKINS WILLIAMS MEDICAL, P.C.; and YK MEDICAL, PLLC, referenced by claim number 873417675 0000 001.



3/14/2023

DATE

LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED
 SETTLE ORDER
 INCLUDES TRANSFER/REASSIGN

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART
 SUBMIT ORDER
 FIDUCIARY APPOINTMENT

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

OTHER

REFERENCE

REFERENCE