

**Unitrin Safeguard Ins. Co. v 406 Med., P.C.**

2023 NY Slip Op 32647(U)

July 31, 2023

Supreme Court, New York County

Docket Number: Index No. 160944/2020

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  
COUNTY OF NEW YORK: PART 02TR

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UNITRIN SAFEGUARD INSURANCE COMPANY,  
  
Plaintiff,

- v -

406 MEDICAL, P.C.,AFFINITY RX., INC.,ALL NATIONS  
DME CORP., ALL WELLNESS ACUPUNCTURE,  
P.C.,ANCIENT POINT ACUPUNCTURE, P.C.,ANDREW J.  
DOWD, M.D., ATLANTIC MEDICAL CARE, P.C.,BETTER  
HANDS PHYSICAL THERAPY, P.C.,CROSS RIVER PAIN  
MANAGEMENT, P.C.,FRESH POND MEDICAL SUPPLY,  
INC.,JEVA PHYSICAL THERAPY, P.C.,JPB  
CHIROPRACTIC, P.C.,MAJESTIC MEDICAL IMAGING,  
P.C.,ONE TOUCH HEALTH SUPPLY, INC.,PRESSURE  
POINTS ACUPUNCTURE CARE, P.C.,QUALITY MED  
EQUIP, INC, RELIEF PHYSICAL THERAPY,  
P.C.,ROCKAWAY COMPLETE CHIROPRACTIC,  
P.C.,SHOP-N-SAVE PHARMACY, INC, STAND-UP MRI  
OF BROOKLYN, P.C.,HILDA D ORTEGA, KEMAGNE  
THEAGENE,

Defendant.

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**INDEX NO.** 160944/2020  
**MOTION DATE** 04/26/2023  
**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 94, 95

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

In this declaratory judgment action seeking to disclaim No-Fault coverage, plaintiff Unitrin Safeguard Insurance Company (“Unitrin”) moves for an order pursuant to CPLR 3215 granting default judgment against defendants All Wellness Acupuncture, P.C.; Atlantic Medical Care, P.C.; Better Hands Physical Therapy, P.C.; Fresh Pond Medical Supply, Inc.; Majestic Medical Imaging, P.C.; One Touch Health Supply, Inc.; Relief Physical Therapy, P.C.; Rockaway Complete Chiropractic, P.C.; Stand-Up MRI of Brooklyn, P.C.; Accu Reference Medical Lab LLC; Contemporary Orthopedics, PLLC; East Coast Medical Associate, P.C.; July Gaysynsky, MD; Recovery Ortho Solutions Inc.; Sedation Vacation Perioperative Medicine

PLLC; Right Choice Supply, Inc.; and SP One Services, Inc. These parties (collectively “Non-Answering Defendants”) have not appeared in this action and have not opposed the present motion.

This action arises out of an alleged motor vehicle accident in Queens. Defendants Hilda D. Ortega and Kemagne Theagene (collectively “Claimants”) allege that they were passengers in a Unitrin-insured vehicle on January 14, 2020 when the vehicle was involved in a collision near Exit 13 of the Jackie Robinson Parkway. There was no police report generated at the scene of the alleged collision, although one was generated at the precinct where Claimants later reported the incident. The Claimants subsequently reported serious bodily injuries and purportedly received treatment from the other defendants (collectively, “Medical Provider Defendants”). The Medical Provider Defendants then allegedly submitted No-Fault claims as assignees of the Claimants.

Unitrin maintains that it found the No-Fault claims questionable due to the circumstances of the alleged collision and the magnitude of the claims submitted. It exercised its rights under the No-Fault regulations and requested examinations under oath (“EUOs”) of the Claimants. The EUOs were held, but Unitrin asserts that Claimants’ testimony raised a strong possibility that purported injuries were not related to the collision, exaggerated, or otherwise did not arise from an insured incident. Unitrin consequently denied all claims arising from the alleged accident and instituted this action on December 16, 2020 seeking a declaratory judgment that it owes no duty to pay No-Fault claims arising from the incident.

Unitrin now moves for default judgment on its second and third causes of action, based upon Claimants’ failure to subscribe their EUO transcripts and Unitrin’s founded belief that Claimants’ alleged injuries and No-Fault treatment were not causally related to the purported

collision, respectively. 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 facts constituting its claim, and proof of default (CPLR 3215[f]; *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 [1st Dept 2016]). Here, Unitrin submits proof of service of the Summons and Complaint upon the Non-Answering Defendants (NYSCEF Doc. No. 77), proof of the facts constituting its claim (NYSCEF Doc. Nos. 80-87, 89), and proof of the Non-Answering Defendants' default (NYSCEF Doc. No. 79).

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 subscribe and return an EUO transcript constitutes a breach of a condition precedent to coverage under the applicable No-Fault regulations and warrants denial of claims submitted pursuant to a policy regulated thereunder (*Kemper Independence Ins. Co. v Cornerstone Chiropractic, P.C.*, 185 AD3d 468 [1st Dept 2020]; *Hereford Ins. Co. v Forest Hills Med., P.C.*, 172 AD3d 567, 568 [1st Dept 2019]). Here, Unitrin demonstrates that Claimants failed to subscribe and return their respective EUO transcripts (NYSCEF Doc. Nos. 85, 86, 87, 89). The Court finds that Claimants breached a condition precedent to No-Fault coverage and accordingly grants the branch of Unitrin's motion for default judgment on the second third cause of action.

As the Court has found that Unitrin is entitled to default judgment on its second cause of action as against the Non-Answering Defendants, it declines to rule on whether Unitrin submits sufficient proof of facts as to its third cause of action for founded belief. The motion is therefore denied as moot with respect to the third cause of action.

Accordingly, it is hereby:

ORDERED that Unitrin's motion for a default judgment against defendants All Wellness Acupuncture, P.C.; Atlantic Medical Care, P.C.; Better Hands Physical Therapy, P.C.; Fresh Pond Medical Supply, Inc.; Majestic Medical Imaging, P.C.; One Touch Health Supply, Inc.; Relief Physical Therapy, P.C.; Rockaway Complete Chiropractic, P.C.; Stand-Up MRI of Brooklyn, P.C.; Accu Reference Medical Lab LLC; Contemporary Orthopedics, PLLC; East Coast Medical Associate, P.C.; July Gaysynsky, MD; Recovery Ortho Solutions Inc.; Sedation Vacation Perioperative Medicine PLLC; Right Choice Supply, Inc.; and SP One Services, Inc., is granted as to the second cause of action; and it is further

ORDERED that the motion is denied as moot as to the third cause of action; and it is further

ORDERED, ADJUDGED, and DECLARED that Unitrin owes no duty to provide No-Fault reimbursements to defendants All Wellness Acupuncture, P.C.; Atlantic Medical Care, P.C.; Better Hands Physical Therapy, P.C.; Fresh Pond Medical Supply, Inc.; Majestic Medical Imaging, P.C.; One Touch Health Supply, Inc.; Relief Physical Therapy, P.C.; Rockaway Complete Chiropractic, P.C.; Stand-Up MRI of Brooklyn, P.C.; Accu Reference Medical Lab LLC; Contemporary Orthopedics, PLLC; East Coast Medical Associate, P.C.; July Gaysynsky, MD; Recovery Ortho Solutions Inc.; Sedation Vacation Perioperative Medicine PLLC; Right Choice Supply, Inc.; and SP One Services, Inc., in connection with the alleged incident of January 14, 2020 (Unitrin claim number C004219NY20); and it is further


ORDERED that the Clerk is directed to enter judgment as against defendants All Wellness Acupuncture, P.C.; Atlantic Medical Care, P.C.; Better Hands Physical Therapy, P.C.; Fresh Pond Medical Supply, Inc.; Majestic Medical Imaging, P.C.; One Touch Health Supply,

Inc.; Relief Physical Therapy, P.C.; Rockaway Complete Chiropractic, P.C.; Stand-Up MRI of Brooklyn, P.C.; Accu Reference Medical Lab LLC; Contemporary Orthopedics, PLLC: East Coast Medical Associate, P.C.; July Gaysynsky, MD: Recovery Ortho Solutions Inc.; Sedation Vacation Perioperative Medicine PLLC; Right Choice Supply, Inc.; and SP One Services, Inc.

All other relief sought and not granted herein is denied.

This constitutes the Decision and Order of the Court.

7/31/2023  
DATE

  
LORI S. SATTLER, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE