

<b>American Tr. Ins. Co. v Romero</b>
2024 NY Slip Op 35179(U)
October 11, 2024
Supreme Court, Bronx County
Docket Number: Index No. 806451/2023E
Judge: Naita A. Semaj
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX, IAS PART 27**

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**AMERICAN TRANSIT INSURANCE  
COMPANY,**

**Index №. 806451/2023E**

**Plaintiff,**

**-against-**

**Hon. NAITA A. SEMAJ**

**Justice Supreme Court**

**JOSE ROMERO,**

**ADVANCED ORTHOPEDICS AND JOINT  
PRESERVATION, P.C.,**

**ADVANT ORTHOCARE INC.,**

**BROOKLYN MEDICAL PRACTICE, P.C.,**

**COMMUNITY MEDICAL IMAGING, P.C.,**

**EXACT ORTHOMED, INC.,**

**GOOD MEDICA, INC.,**

**NORTH SHORE FAMILY CHIROPRACTIC  
P.C.,**

**ORTHOWELLNESS INC.,**

**ROXBURY ANESTHESIA, LLC,**

**SIMPLEPHARM,**

**SURGICORE OF JERSEY CITY, LLC,**

**UNICORN ACUPUNCTURE, P.C.,**

**WELLNESS EXPRESS P.T., P.C.,**

**Defendants.**

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The following papers (NYSCEF doc. # 32 – 41) were read on Plaintiff’s motion (Seq. No. 1) for **default judgment**, were duly submitted on July 15, 2024.

Notice of Motion – Affirmation and Appended Documents	NYSCEF Doc. # 32 - 41
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Upon the foregoing papers, (Mot. Seq. 1) by Plaintiff AMERICAN TRANSIT INSURANCE COMPANY, (hereafter ATIC) for an order pursuant to CPLR § 3215 granting Plaintiff default judgment as against Defendants JOSE ROMERO, BROOKLYN MEDICAL PRACTICE, P.C., COMMUNITY MEDICAL IMAGING, P.C., NORTH SHORE FAMILY CHIROPRACTIC P.C., ROXBURY ANESTHESIA, LLC, SURGICORE OF JERSEY CITY,

LLC, UNICORN ACUPUNCTURE, P.C., and WELLNESS EXPRESS P.T., P.C. is decided as follows:

Plaintiff commenced this action on April 25, 2023, seeking Declaratory judgement of noncoverage for injuries allegedly sustained by Defendant Jose Romero from an automobile accident on February 2, 2021. The complaint alleges that an internal investigation by Plaintiff has determined that the Defendant, Jose Romero's injuries were not causally related to the incident at hand.

Where a defendant has failed to appear, plead, or proceed to trial, a plaintiff may seek a default judgment against them (CPLR§ 3215[a]). Generally, to establish entitlement to a default judgment, a plaintiff must submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the default (CPLR §3215 [f]; *Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023], citing *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418, 418 [1st Dept 2016]). To establish proof of the facts constituting the claim, a plaintiff must submit an affidavit or verified complaint from someone with personal knowledge, setting forth sufficient facts to determine that a viable cause of action exists (*see Zelnik v Bidermann Indus. U.S.A.*, 242 AD2d 227 [1st Dept 1997]). BCL 306 requires additional service of the summons and complaint by first class mail upon a defendant corporation in accordance with CPLR 3215(g) (4) (i) (*Sterk-Kirch v Uptown Communications & Elec., Inc*, 124 AD3d 413, 413-414 [1st Dept 2015]).

Here, Plaintiff has met its prima facie burden establishing entitlement to a default judgment against Defendants JOSE ROMERO, BROOKLYN MEDICAL PRACTICE, P.C., COMMUNITY MEDICAL IMAGING, P.C., NORTH SHORE FAMILY CHIROPRACTIC P.C., ROXBURY ANESTHESIA, LLC, SURGICORE OF JERSEY CITY, LLC, UNICORN ACUPUNCTURE, P.C., and WELLNESS EXPRESS P.T., P.C by providing 1. a verified complaint setting forth the facts that constitute a claim in this action, 2. an affidavit of RIGOBERTO J. OCASIO JR. affirming personal service of the summons, verified complaint, Verification on Defendant JOSE ROMERO, on April 29, 2023, 3:29PM at 34-15 Fort Independence Street, Apt. D, Bronx NY 10463, said place being Defendant Romero's usual place of residence, by leaving a true copy or copies of said documents with DENISE (DOE) (REFUSED FULL NAME), CO-TENANT, a person of suitable age and discretion. The affirmation stated that Defendant Romero was also served on May 5, 2023, via first class mail to

the above address, 3. An affirmation of Robert Guyette, affirming service of the Summons, Verified Complaint, and NYSCEF Confirmation Notice on Defendant Brooklyn Medical Practice, P.C, by delivering two copies of the same, to and leaving with Sue Zouky, an AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, on April 28, 2023, 4. An affirmation of Robert Guyette, affirming service of the Summons, Verified Complaint, and NYSCEF Confirmation Notice on Defendant Community Medical Imaging, P.C., by delivering two copies of the same, to and leaving with Sue Zouky, an AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, on April 28, 2023, 5. An affirmation of Robert Guyette, affirming service of the Summons, Verified Complaint, and NYSCEF Confirmation Notice on Defendant North Shore Family Chiropractic P.C., by delivering two copies of the same, to and leaving with Sue Zouky, an AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, on April 28, 2023, 6. An affirmation of WILLIAM DELATORRE,, affirming service of the Summons, Verified Complaint, and NYSCEF Confirmation Notice on Defendant Roxbury Anesthesia LLC., by delivering a true copy of the same, to and leaving with “Jeff” last name refused, a manager, who affirmed authority to accept service, on April 27, 2023, 7. An affirmation of WILLIAM DELATORRE,, affirming service of the Summons, Verified Complaint, and NYSCEF Confirmation Notice on Defendant Surgicore of Jersey City, LLC., by delivering a true copy of the same, to and leaving with Leticia Escobar, a supervisor, who affirmed authority to accept service, on April 27, 2023,, 8. An affirmation of Robert Guyette, affirming service of the Summons, Verified Complaint, and NYSCEF Confirmation Notice on Defendant Community Unicorn Acupuncture, P.C., by delivering two copies of the same, to and leaving with Sue Zouky, an AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, on April 28, 2023, 9. An affirmation of Robert Guyette, affirming service of the Summons, Verified Complaint, and NYSCEF Confirmation Notice on Defendant Community Medical Imaging, P.C., by delivering two copies of the same, to and leaving with Sue Zouky, an AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, on April 28, 2023, 10. An affirmation of Robert Guyette, affirming service of the Summons, Verified Complaint, and NYSCEF Confirmation Notice on Defendant Wellness Express P.T., P.C., by delivering two copies of the same, to and leaving with Sue Zouky, an AUTHORIZED AGENT in the Office of the Secretary of State, of the State of New York, on

April 28, 2023, and 11. An affirmation of JOSEPH LUBRANO, affirming service of the notice of default as well as an additional copy of the summons and complaint by mailing the same to the last known address of each party listed herein.

Additionally, each of the above named Defendants JOSE ROMERO, BROOKLYN MEDICAL PRACTICE, P.C., COMMUNITY MEDICAL IMAGING, P.C., NORTH SHORE FAMILY CHIROPRACTIC P.C., ROXBURY ANESTHESIA, LLC, SURGICORE OF JERSEY CITY, LLC, UNICORN ACUPUNCTURE, P.C., and WELLNESS EXPRESS P.T., P.C have defaulted in this action by failing to file an answer or defense to the summons and complaint and by failing to respond to the instant motion.

(i). Accordingly, it is hereby,

**ORDERED**, that Plaintiff's motion for a default judgment as to Defendants JOSE ROMERO, BROOKLYN MEDICAL PRACTICE, P.C., COMMUNITY MEDICAL IMAGING, P.C., NORTH SHORE FAMILY CHIROPRACTIC P.C., ROXBURY ANESTHESIA, LLC, SURGICORE OF JERSEY CITY, LLC, UNICORN ACUPUNCTURE, P.C., and WELLNESS EXPRESS P.T., P.C. is Granted. and an inquest and assessment of damages shall be held at the time of trial.:

This constitutes the Decision and Order of this Court.

**Dated:** 10/11/2024

Hon.   
NAITA A. SEMAJ, J.S.C.

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- 1. CHECK ONE.....  CASE DISPOSED IN ITS ENTIRETY     CASE STILL ACTIVE
  - 2. MOTION IS.....  GRANTED     DENIED     GRANTED IN PART     OTHER
  - 3. CHECK IF APPROPRIATE.....  SETTLE ORDER     SUBMIT ORDER     SCHEDULE APPEARANCE
  - FIDUCIARY APPOINTMENT     REFEREE APPOINTMENT

