

**State Farm Mut. Auto. Ins. Co. v Advanced  
Orthopedics & Joint Preserv., P.C.**

2025 NY Slip Op 31425(U)

April 21, 2025

Supreme Court, New York County

Docket Number: Index No. 159442/2024

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART 12M

Justice

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INDEX NO. 159442/2024

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

MOTION DATE 02/05/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

ADVANCED ORTHOPEDICS AND JOINT PRESERVATION, P.C., ALLMED MERCHANDISE & TRADING INC., ALMA MED SUPPLY CORP., AMERICAN MEDICAL INITIATIVES, P.C., AVE U EQUIPMENT, INC., AXIAL CHIROPRACTIC, P.C., CYPRESS RX INC. D/B/A CYPRESS RX 1 INC., FRANK S. SEGRETO, M.D., P.C., GET WELL RX, INC., HESS ORTHOPEDICS, PLLC D/B/A HESS ORTHOPEDICS QUEENS D/B/A HESS ORTHOPEDICS BRONX, HILLSIDE PHYSICAL THERAPY, P.C., HUDSON SURGERY CENTER, LLC D/B/A HUDSON SURGERY CENTER, JPR ONE INC., LINDEN BLVD SUPPLIES INC., MEDCARE MEDICAL SUPPLY CORP., MEDICAL MRI, P.C., MEDLINE PLUS PHARMACY INC., MOSAIC DIAGNOSTIC IMAGING, PLLC, NY ANESTHESIA PAIN MANAGEMENT, PLLC, NYEEQASC, LLC D/B/A NORTH QUEENS SURGICAL CENTER, PAIN PHYSICIANS NY, PLLC, PREMIER GROUP SERVICE INC. D/B/A PREMIER GROUP SERVICES INC., QUALITY LABORATORY SERVICE, RAFAEL YAAKOBV FAMILY HEALTH NP, P.C., RCK MEDICAL SERVICES, P.C., SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, STAR MEDICAL IMAGING, P.C., SUNRISE HEALING SUPPLY SERVICES INC., SURGIMED CARE INC., TARGET MEDICAL SUPPLY INC., TOTAL ANESTHESIA PROVIDER, P.C., TOTAL MED RX INC., TRIBOROUGH ASC, LLC, WALMED EQUIPMENT, LLC, WORLD RX PHARMACY INC., DIGNA L. BORJA PENARANDA, EDWIN GONZALEZ, ILVIA RODRIGUEZ

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75

were read on this motion to/for JUDGMENT - DEFAULT

Plaintiff moves here for a default judgment, pursuant to CPLR 3215, against all defendants, except for defendants Hillside Physical Therapy, PC, Medicare Medical Supply Corp, Target Medical Supply Inc., Walmed Equipment, LLC, Hudson Surgery Center, and NY Anesthesia Pain Management, PLLC, for their failure to answer or appear in this action. Claimant-defendants Digna L. Borja Penaranda (the insured), Edwin Gonzalez, and Ilvia Rodriguez were allegedly involved in a motor vehicle accident on October 26, 2023 or October 27, 2023, involving a vehicle insured by plaintiff State Farm, and sought to recover no-fault benefits under plaintiff's policy. State Farm received notice that claimant-defendants reported to have sustained serious bodily injuries as a result of the subject accident and were receiving treatment from the medical provider defendants. Plaintiff claims that based upon an investigation, the accident was not an insured event and that the injuries allegedly sustain by claimant-defendants did not arise from a covered event under no-fault regulations.

An application for a default judgment must be supported with “proof of service of the summons and complaint [,] ... proof of the facts constituting the claim, [and] the default” (CPLR 3215 [f]). In addition to furnishing proof of service, the plaintiff must offer “some proof of liability ... to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*id.*). “[A] complaint verified by someone or an affidavit executed by a party with personal knowledge of the merits of the claim” satisfies this statutory requirement (*Beltre v Babu*, 32 AD3d 722, 723 [1st Dept 2006]). Here, plaintiff provided proof of service upon the defaulting parties and a notice of default (Nyscef docs 46 & 52). Defendants failed to file any opposition.

In support of the instant application, plaintiff submitted affirmations of merit by Darianne M. Fitch, a Claims Specialist for State Farm, stating the following factors resulting in plaintiff's finding that the subject accident was not an insured event (Nyscef doc 50, para 7):

- The collision was first reported to SFMAIC on December 5, 2023, by a medical provider; - GONZALEZ has a history of prior collisions;
- There does not appear to be a police report for this collision;
- This collision appears to have an MV-104, dated October 27, 2023, which appears to have been prepared by PENARANDA. The MV104 gives the date of loss as October 26, 2023, a Thursday, at 10:30 A.M. It lists the Insured Vehicle as Vehicle 1, driven by PENARANDA with GONZALEZ and RODRIGUEZ as occupants. They all claim "multiple injuries." It lists Vehicle 2 as a 2023 Volvo SUV, license plate LBL 3066 (the "Adverse Vehicle"), driven by and registered to Anne Elizabeth Zuschlag ("Zuschlag"). The MV-104 indicates that the collision occurred near Exit 14 of the Grand Central Parkway in Queens, New York, where the Adverse Vehicle rearended the Insured Vehicle. See the MV-104 annexed hereto as Exhibit "F;"
- Photographs provided by PENARANDA show that the Insured Vehicle was primarily struck on in rear right corner, while the Adverse Vehicle was primarily struck on its front left corner. See the photographs provided by PENARANDA annexed hereto as Exhibit "G;"
- SFMAIC received a statement from Zuschlag, who expressed concerns that the collision was a "set-up." She stated that the Insured Vehicle tried to merge into her lane, causing her to slam on the brakes, but she still tapped the Insured Vehicle's bumper at 40 miles per hour. Everyone at the scene agreed that there were no injuries. The police were not called. Zuschlag believed it was a set-up because the occupants of the Insured Vehicle, and several cars in front of them, immediately stopped, exited their vehicles and started taking photographs, as though they expected the collision to occur. See Zuschlag's telephone statement annexed hereto as Exhibit "H;"
- The relationship between the CLAIMANT-DEFENDANTS is unclear. They do not appear in each other's Accurant reports and there is a large age difference between PENARANDA and the other two CLAIMANT-DEFENDANTS; and
- SFMAIC began receiving medical bills for the CLAIMANTDEFENDANTS in relation to this loss.

Ms. Fitch also outlined discrepancies from claimant-defendants EUO testimonies and plaintiff's investigation (Id., para 15). In consideration of the foregoing, plaintiff's motion for default judgment against defendants is granted.

\* \* \*

Accordingly, it is hereby

ORDERED that plaintiff's motion for default judgment is granted against defendants, except for defendants Hillside Physical Therapy, PC, Medicare Medical Supply Corp, Target Medical Supply Inc., Walmed Equipment, LLC, Hudson Surgery Center, and NY Anesthesia Pain Management, PLLC, declaring that there is no No-Fault coverage for their alleged claims relating to the October 26, 2023/October 27, 2023 collision referenced by State Farm claim number 32-60C0-10L, and that State Farm owes no duty to defend or indemnify defendant Penaranda for any potential lawsuits or claims filed against her by any third parties, including defendants Gonzalez and Rodriguez, or the occupants of the adverse vehicle; and it is further<sup>1</sup>

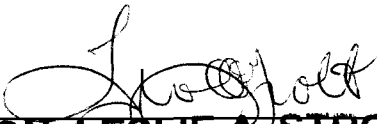
ORDERED, that plaintiff shall serve a copy of this order upon defendants and the County Clerk within 30 days; and it is further

ORDERED, that the County Clerk is directed to enter judgment.

ORDERED that the County Clerk is directed to enter judgment; and it is further

The foregoing constitutes the decision of the Court.

4/22/25  
DATE

  
HON. LESLIE A. STROTH  
J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

<sup>1</sup> The motion is denied as moot as to defendant Mosaic Diagnostic Imaging, pursuant to the stipulation dated February 3, 2025 (Nyscef doc 78), NY Anesthesia Pain Management, pursuant to the stipulation dated February 12, 2025 (Nyscef doc 81), and Hudson Surgery Center, pursuant to the stipulation dated March 7, 2025 ((Nyscef doc 82).