

**Liberty Mut. Ins. Co. v Alvarez**

2025 NY Slip Op 31926(U)

May 21, 2025

Supreme Court, New York County

Docket Number: Index No. 653127/2023

Judge: Lori S. Sattler

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

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 02M**

*Justice*

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LIBERTY MUTUAL INSURANCE COMPANY, LM  
GENERAL INSURANCE COMPANY,

Plaintiff,

INDEX NO. 653127/2023

MOTION DATE 10/29/2024

MOTION SEQ. NO. 002

- v -

TOMAS ALVAREZ, RICAR CASTILLO BONILLA,  
MAYNOR CARDOVA CASTILLO, DIANORIS MARTINEZ,  
101 RX PHARMACY INC, BRIDGEVIEW SUPPLY CORP,  
BRONX MEDICAL PROFESSIONAL, PC,CADS  
ANESTHESIA SERVICES PLLC,CITIMED COMPLETE  
MEDICAL CARE PC,DIANA BEYNIN DC, JTK  
CHIROPRACTIC CARE PC,KMR MEDICAL CARE,  
PC,MACINTOSH MEDICAL, PC,NEW HORIZON  
SURGICAL CENTER LLC,OLGA GIBBONS MD,  
ORTHOMOTION REHAB DME, LLC,PARS MEDICAL  
PC,PRECISION ANESTHESIA ASSOCIATES, INC, RAPID  
EQUIPMENT, INC, RVA LEASING CORP, SCOB  
LLC,SOLOMON HALIOUA MD, SUSAN J. BILY-LINDNER,  
PSYD, PLLC DBA NORTH SHORE/SOUTH SHORE  
PSYCHOLOGICAL SERVICES, TANIYN LEASING CORP,  
UNITY CARE PHYSICAL THERAPY, PC,VUA PHARMACY,  
INC, WENDELL JOSEPH GORUM MD & DBA W JOSEPH  
GORUM MD PC

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 70, 71, 72

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

This declaratory judgment action arises out of an alleged motor vehicle accident which occurred on March 19, 2022 at the intersection of Washington Avenue and Weiher Court in the Bronx, New York. A car being driven by non-claimant Wendy Sambula Jackson (“Jackson”) was purportedly hit when another car driven by nonparty Edward Tineo (“Tineo”) drove through a stop sign and collided with Jackson’s vehicle. Jackson’s car was insured by Plaintiffs, Liberty Mutual Insurance Company and LM General Insurance Company (“Plaintiffs”). Claimant-

defendants Tomas Alvarez, Richar Castillo Bonilla, Maynor Cardova Castillo and Dianoris Martinez, (“Claimants”) were the alleged passengers in the car, although Tineo claimed that Jackson was alone in the car with no passengers. Jackson’s car was insured by plaintiffs Liberty Mutual Insurance Company and LM General Insurance Company (“Plaintiffs”). Claimants purportedly sought treatment from the other defendants (“Medical Provider Defendants”), which then submitted bills to Plaintiff seeking reimbursement under the vehicle’s No-Fault policy. As part of the claims investigation process, Plaintiff requested that Claimants appear for Examinations Under Oath (“EUOs”). The Claimants subsequently failed to appear at their respective EUOs (NYSCEF Doc. Nos. 48-52). Plaintiff denied the bills submitted by the Medical Provider Defendants (NYSCEF Doc. No. 53)

Plaintiff thereafter commenced this action seeking a declaratory judgment that it has no obligation to reimburse the Medical Provider Defendants under the applicable No-Fault policy. Default judgment was entered against certain Medical Provider Defendants and Claimants on March 21, 2024 (NYSCEF Doc. No. 31). Plaintiff now moves for summary judgment against the remaining Medical Provider Defendants, which oppose the motion. Although Plaintiffs also moved for relief against Bridgeview Supply Corp., Rapid Equipment Inc., RVA Leasing Corp., Taniyn Leasing Corp., and Vua Pharm, Inc., the action was subsequently discontinued as against them (NYSCEF Doc. No. 68).

On a motion for summary judgment, a movant must make a prima facie showing that they are entitled to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any issue of material fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). After the movant makes this showing, “the burden shifts to the party opposing the motion . . . to

produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact such that trial of the action is required” (*id.*).

11 NYCRR § 65-1.1 requires that full compliance by an eligible injured person with the terms of coverage in a No-Fault policy is a condition precedent to all claims against an insurance company under the relevant policy. A claimant-defendant’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]). An insurer must establish that it requested EUOs in accordance with the procedures and time frames in the No-Fault regulations (11 NYCRR § 65-3.5) in order to deny a claim where a claimant-defendant fails to appear for an EUO (*Unitrin*, 82 AD3d at 560; *American Tr. Ins. Co. v Longevity Med. Supply, Inc.*, 131 AD3d 841, 841-42 [1st Dept 2019]).

Here, Plaintiff presents sufficient evidence to meet its prima facie burden for summary judgment as it demonstrates that the EUOs were properly and timely noticed by submitting copies of the EUO requests and proof of Claimants’ nonappearance (NYSCEF Doc. Nos. 48-52). It further submits copies of the Claimants’ NF-2 applications for No-Fault benefits and the answering Medical Provider Defendants’ NF-3 claim forms (NYSCEF Doc. No. 47, 56). The answering Medical Provider Defendants fail to show the existence of any material of fact in their opposition as to whether Plaintiff’s EUO requests adhered to the No-Fault policy and regulations. The Court further finds unavailing the Answering Defendants’ argument that the motion is premature based on the need for additional discovery (*see* NYSCEF Doc. No. 35).

Accordingly, it is hereby:

ORDERED that Plaintiff’s motion for summary judgment is granted; and it is further

ORDERED, ADJUDGED, and DECLARED that Claimants breached a condition precedent to coverage as established by the No-Fault Regulations and the subject policy of insurance and accompanying No-Fault endorsement by failing to appear at their respective EUOs; and it is further

ORDERED, ADJUDGED and DECREED that Plaintiffs' denials of all claims for No-Fault benefits by the Answering Defendants stemming from the alleged occurrence of March 19, 2022 involving individual defendants Tomas Alvarez, Richar Castillo Bonilla, Maynor Cardova Castillo and Dianoris Martinez are valid; and it is further

ORDERED, ADJUDGED, and DECLARED that Plaintiff owes no duty to provide any No-Fault reimbursements to Citimed Complete Medical Care PC, JTK Chiropractic Care PC, New Horizon Surgical LLC, Pars Medical PC, SCOB LLC, Susan J Bily-Lindner PsyD, PLLC dba North Shore/South Shore Psychological Services, and Wendell Joseph Gorum MD individually and dba W Joseph Gorum MD PC for any claim or bill submitted by or on behalf of Tomas Alvarez, Richar Castillo Bonilla, Maynor Cardova Castillo and Dianoris Martinez, as they breached a condition precedent to coverage by failing to appear at their respective EUOs; and it is further

ORDERED, ADJUDGED and DECREED that each and every part of any arbitration or court hearing brought by Citimed Complete Medical Care PC, JTK Chiropractic Care PC, New Horizon Surgical LLC, Pars Medical PC, SCOB LLC, Susan J Bily-Lindner PsyD, PLLC dba North Shore/South Shore Psychological Services, and Wendell Joseph Gorum MD individually and dba W Joseph Gorum MD PC stemming from the alleged occurrence of September 5, 2021 involving individual defendants Tomas Alvarez, Richar Castillo Bonilla, Maynor Cardova Castillo and Dianoris Martinez is hereby permanently stayed; and it is further

ORDERED that the Clerk is directed to enter judgment against Citimed Complete Medical Care PC, JTK Chiropractic Care PC, New Horizon Surgical LLC, Pars Medical PC, SCOB LLC, Susan J Bily-Lindner PsyD, PLLC dba North Shore/South Shore Psychological Services, W and Wendell Joseph Gorum MD individually and dba W Joseph Gorum MD PC.

This constitutes the Decision and Order of the Court.

5/21/2025

DATE



LORI S. SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE