

**Unitrin Safeguard Ins. Co. v Clemente**

2025 NY Slip Op 32304(U)

June 30, 2025

Supreme Court, New York County

Docket Number: Index No. 157170/2024

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04**

*Justice*

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UNITRIN SAFEGUARD INSURANCE COMPANY,  
  
Plaintiff,

**INDEX NO.** 157170/2024

**MOTION DATE** 01/20/2025

**MOTION SEQ. NO.** 001

- v -

ROSA CLEMENTE, WILDREDO CLEMENTE, 79  
EXPRESSRX INC, BIG WAVE SUPPLY, INC, CROSS BAY  
ORTHOPEDIC SURGERY, PC,HIGHLINE SUPPLY, INC,  
INNA LEVTSENKO PRACTITIONER IN ADULT HEALTH,  
PC,JK WELLNESS CHIROPRACTIC, PC,MODERN  
WELLNESS NP IN FAMILY HEALTH, PLLC,MOSAIC  
DIAGNOSTIC IMAGING, PLLC,NATURALIFE  
CHIROPRACTIC, PC,NEW VENTURE PHYSICAL  
THERAPY, PC,RAIA MEDICAL SERVICES, PC,RASHBE  
DME, INC, RIGHT MOTION PT, PC,STAND-UP MRI OF  
ELMHURST PC,UNION SCRIPTS RX, INC,

**DECISION + ORDER ON  
MOTION**

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 30, 31, 32, 33, 34,  
35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 55

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

Upon the foregoing documents, plaintiff’s motion for a default judgment is granted, in part,  
on default and for the reasons set forth below.

Plaintiff commenced this action on August 6, 2024, seeking a declaratory judgment that  
plaintiff is not obligated to pay no-fault benefits for the medical treatment of Rosa Clemente and  
Wilfredo Clemente for injuries they allegedly sustained in a motor vehicle collision on August 13,  
2023, based upon plaintiff’s founded belief that the injuries alleged did not arise out of that  
collision and Rosa and Wilfredo Clemente’s failure to respond to post-EUO demands.

Plaintiff now moves for a default judgment against certain defendants, i.e., Cross Bay Orthopedic Surgery PC, Highline Supply Inc, JK Wellness Chiropractic, PC, Modern Wellness NP In Family Health, PLLC, Mosaic Diagnostic Imaging, PLLC, Naturalife Chiropractic, PC, New Venture Physical Therapy, PC, Rashbe DME, Inc, Right Motion PT, PC, Stand-Up MRI of Elmhurst PC d/b/a Stand-Up MRI of the South Bronx, Union Scripts Rx, Inc. and Rosa and Wilfredo Clemente.

### DISCUSSION

As a threshold matter, the motion is denied as against Mosaic Diagnostic Imaging, PLLC, Right Motion PT, PC, and JK Wellness Chiropractic, PC, which were discontinued from this action, by stipulation, after the filing of this motion (NYSCEF Doc No. 54). The motion is otherwise granted.

In order to establish its entitlement to a default judgment pursuant to CPLR 3215, plaintiff must submit proof of: (1) service of the summons and complaint; (2) the facts constituting the claim; and (3) defendants' default in answering or appearing (*see Gordon Law Firm, P.C. v Premier DNA Corp.*, 205 AD3d 416, 416 [1st Dept 2022]). Where, as here, service was effected on certain defendants via the New York State Secretary of State pursuant to BCL §306, plaintiff is also required, per CPLR 3215(g)(4), to establish its additional service of the summons and complaint by first class mail at these defendants' last known address, (*see Sterk-Kirch v Uptown Communications & Elec, Inc.*, 124 AD3d 413, 414 [1st Dept 2015]).

Plaintiff has satisfied these requirements. To wit, plaintiff submits an affidavit of service documenting its service of the summons and complaint on the corporate defendants via the New York State Secretary of State and on the individual defendants pursuant to CPLR 308(1) and (2), respectively (NYSCEF Doc No. 33, affidavits of service). It has also established the additional

mailing of the summons and complaint upon the corporate defendants as required by CPLR 3215(g)(4) (*see* NYSCEF Doc. No. 35, notice of default with affirmation of mailing) and defendants' default (NYSCEF Doc No. 31, Tarasova affirm. at ¶7). While defendants Union Scripts Rx, Inc, Rashbe DME Inc., Highline Supply, Inc. filed an Answer on April 29, 2025, as this filing was months after the submission of plaintiff's motion, it is a nullity (*see Estrella v Herrera*, 23 AD3d 320, 321 [1st Dept 2005]).

Finally, plaintiff has established proof of the facts constituting its claim through the affidavit of Denise Winant, a No-Fault claim representative employed by Merastar Insurance Company, in which she details the basis for plaintiff's conclusion that the injuries alleged did not arise out of the August 13, 2023 collision<sup>1</sup> (*see Hereford Ins. Co. v Interdependent Acupuncture PLLC*, 234 AD3d 410, 411 [1st Dept 2025]; *see also State Farm Mut. Auto. Ins. Co. v AK Glob. Supply Corp.*, 203 AD3d 556 [1st Dept 2022]).

Accordingly, it is

**ORDERED** that plaintiff's motion for a default judgment is granted as against defendants Cross Bay Orthopedic Surgery PC, Highline Supply Inc, Modern Wellness NP In Family Health, PLLC, Naturalife Chiropractic, PC, New Venture Physical Therapy, PC, Rashbe DME, Inc, Stand-Up MRI of Elmhurst PC d/b/a Stand-Up MRI of the South Bronx, Union Scripts Rx, Rosa Clemente or Wilfredo Clemente and denied as against defendants Mosaic Diagnostic Imaging, PLLC, Right Motion PT, PC, and JK Wellness Chiropractic, PC; and it is further

**ORDERED, ADJUDGED, and DECLARED** that Unitrin Safeguard Insurance Company has no duty to provide, pay, or honor any current or future claims by Cross Bay Orthopedic Surgery PC, Highline Supply Inc, Modern Wellness NP In Family Health, PLLC, Naturalife Chiropractic,

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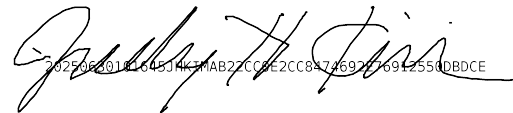
<sup>1</sup> In light of the foregoing Court declines to reach plaintiff's argument that the individual defendants' failure to respond to post-EUO demands provided independent grounds to deny the subject no-fault claims.

PC, New Venture Physical Therapy, PC, Rashbe DME, Inc, Stand-Up MRI of Elmhurst PC d/b/a Stand-Up MRI of the South Bronx, Union Scripts Rx, Rosa Clemente and Wilfredo Clemente, including but not limited to claims for Mandatory Personal Injury Protection (No-Fault), Additional Personal Injury Protection, Uninsured/Underinsured Motorist Coverage, and Supplemental Uninsured/Underinsured Motorist Coverage, in connection with the alleged collision of August 13, 2023, under Unitrin Safeguard Insurance Company claim number 23123772615; and it is further

**ORDERED** that plaintiff shall, within twenty days from the date of this decision and order, serve a copy of same with notice of entry upon defendants and upon the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

**ORDERED** that such service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website).

This constitutes the decision and order of the Court.



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6/30/2025

DATE

HON. JUDY H. KIM, 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