

State Farm Mut. Auto. Ins. Co. v Cruz-Cordero

2025 NY Slip Op 32490(U)

June 30, 2025

Supreme Court, New York County

Docket Number: Index No. 153698/2024

Judge: James G. Clynes

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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. JAMES G. CLYNES PART 39M

Justice

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Plaintiff,

INDEX NO. 153698/2024
MOTION DATE 01/16/2025
MOTION SEQ. NO. 001

- v -

MARIA CHRISTINA CRUZ-CORDERO, MARTHA M. CORDERO ORTEGA, ALL COUNTY, LLC, ARGYLE PHARMACY, INC, ARUNA SUPPLY, INC, ATLANTIC MEDICAL & DIAGNOSTIC, PC, CHIROPRACTIC SPINE & SPORT OF QUEENS PC, INNA LEVTSENKO PRACTITIONER IN ADULT HEALTH, PC, KIM PHYSICAL THERAPY, PC, MEDLINE PLUS PHARMACY INC, SENECA AVE ACUPUNCTURE, PC, THERAKINEMATIC PT, PC, WELL-BEING CHIROPRACTIC, PC

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, Plaintiff's motion for default judgment against Defendants ALL COUNTY, LLC, ARGYLE PHARMACY, INC, ARUNA SUPPLY, INC, ATLANTIC MEDICAL & DIAGNOSTIC, PC, CHIROPRACTIC SPINE & SPORT OF QUEENS PC, INNA LEVTSENKO PRACTITIONER IN ADULT HEALTH, PC, KIM PHYSICAL THERAPY, PC, MEDLINE PLUS PHARMACY INC, SENECA AVE ACUPUNCTURE, PC, THERAKINEMATIC PT, PC, WELL-BEING CHIROPRACTIC, PC ("Defaulting Defendants") is granted without opposition.

In this action Plaintiff is seeking default judgment to disclaim No-Fault coverage for breach of a condition precedent to No-Fault coverage by Defendants/Claimants failure to subscribe to and return their respective EUO transcripts, founded belief that the collision was not a covered

incident, and no obligation to provide liability coverage for the alleged incident arising out of the July 30, 2023 under SFMAIC claim number 32-53T9-54H.

On July 30, 2023, Defendant/Claimant MARTHA M. CORDERO ORTEGA was involved in an alleged motor vehicle collision at or near 2870 Hempstead Turnpike, in Nassau County, New York. A police report stated that there was a collision with an adverse vehicle which fled the scene of the accident. The police report further stated there were no injuries reported at the scene. Shortly afterwards Plaintiff received applications for No-Fault Benefits from Defendants/Claimants MARIA CHRISTINA CRUZ-CORDERO and MARTHA M. CORDERO ORTEGA. Both Defendants reported to have sustained significant bodily injuries in the collision.

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 to 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]).

Plaintiff found these claims questionable and exercised its rights under the No-Fault regulations to request examinations under oath ("EUOs") of Defendants to determine the legitimacy of the loss and necessity of any alleged treatment. Defendants appeared at their respective EUOs. However, Plaintiff found their testimony questionable, namely Defendant MARIA CHRISTINA CRUZ-CORDERO was not listed on the police accident report but began treating for injuries she allegedly sustained in the collision, Plaintiff spoke with the responding officer after the collision who stated Defendant MARTHA M. CORDERO ORTEGA was alone in the insured vehicle, the adverse vehicles insurance company advised that their investigation revealed only one person was in the insured vehicle at the time of the loss, inter alia. Following each Defendants EUO, Plaintiff forwarded copies of their EUO transcripts for execution to be returned to Plaintiff; neither Defendant did so.

An insurer may assert a lack of coverage defense based on the fact or founded belief that a

claimant's alleged injury did not arise out of a covered incident (*Cent. Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 201 [1997]). In demonstrating the facts supporting its founded belief, an insurer may present circumstantial evidence to prove such facts, provided that a reasonable inference can be drawn from them (*Benzaken v Verizon Communications, Inc.*, 21 AD3d 864, 865 [2d Dept 2005], quoting *Staples v Sisson*, 274 AD2d 779, 781 [3d Dept 2000]). A defaulting defendant is deemed to have admitted the allegations in a plaintiff's complaint by its failure to answer (*State Farm Mut. Auto. Ins. Co. v Surgicore of Jersey City*, 195 AD3d 454, 455 [1st Dept 2021])

Here, Defendants MARIA CHRISTINA CRUZ-CORDERO and MARTHA M. CORDERO ORTEGA defaulted by failing to submit an answer and are deemed to have admitted the allegations in Plaintiff's complaint.

Plaintiff later stipulated with Defendants MARIA CHRISTINA CRUZ-CORDERO and MARTHA M. CORDERO ORTEGA whereby Defendants waived any claims they have asserted or might ever assert for the July 30, 2023, collision under claim number 32-53T9-53H. In return Plaintiff discontinued the action with prejudice against both MARIA CHRISTINA CRUZ-CORDERO and MARTHA M. CORDERO ORTEGA (NYSCEF Doc. Nos. 16, 17, and 22).

A plaintiff moving for default judgment must establish proper service on defendant; defendant's default; and the facts constituting plaintiff's claims. (CPLR 3215 [f].) Plaintiff has shown that it properly served the Defaulting Defendants and none of the Defaulting Defendants appeared in this action. Plaintiff has sufficiently proven the facts constituting its claim for default-judgment through the affidavit of Zachary Whiting and Susan Marcello and the documents attached to the affidavit, including copies of the EUO transcripts, police report, and stipulations.

The motion is granted without opposition. Accordingly, it is

ORDERED that the Plaintiff's motion for default judgment based on breach of a condition precedent to No-Fault coverage is granted against Defendants ALL COUNTY, LLC, ARGYLE PHARMACY, INC, ARUNA SUPPLY, INC, ATLANTIC MEDICAL & DIAGNOSTIC, PC, CHIROPRACTIC SPINE & SPORT OF QUEENS PC, INNA LEVTSENKO PRACTITIONER

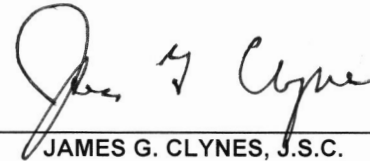
IN ADULT HEALTH, PC, KIM PHYSICAL THERAPY, PC, MEDLINE PLUS PHARMACY INC, SENECA AVE ACUPUNCTURE, PC, THERAKINEMATIC PT, PC, WELL-BEING CHIROPRACTIC, PC; and it is further

ORDERED, ADJUDGED, and DECLARED that STATE FARM owes no duty to provide No-Fault reimbursements to Defendants ALL COUNTY, LLC, ARGYLE PHARMACY, INC, ARUNA SUPPLY, INC, ATLANTIC MEDICAL & DIAGNOSTIC, PC, CHIROPRACTIC SPINE & SPORT OF QUEENS PC, INNA LEVTSENKO PRACTITIONER IN ADULT HEALTH, PC, KIM PHYSICAL THERAPY, PC, MEDLINE PLUS PHARMACY INC, SENECA AVE ACUPUNCTURE, PC, THERAKINEMATIC PT, PC, WELL-BEING CHIROPRACTIC, PC in connection with the alleged incident on July 30, 2023 (claim number 32-53T9-53H); and it is further

ORDERED that the Clerk is directed to enter judgment as against Defendants ALL COUNTY, LLC, ARGYLE PHARMACY, INC, ARUNA SUPPLY, INC, ATLANTIC MEDICAL & DIAGNOSTIC, PC, CHIROPRACTIC SPINE & SPORT OF QUEENS PC, INNA LEVTSENKO PRACTITIONER IN ADULT HEALTH, PC, KIM PHYSICAL THERAPY, PC, MEDLINE PLUS PHARMACY INC, SENECA AVE ACUPUNCTURE, PC, THERAKINEMATIC PT, PC, WELL-BEING CHIROPRACTIC, PC

ORDERED that Plaintiff is directed to serve a copy of this Decision and Order with notice of entry within twenty days, and it is further

This constitutes the Decision and Order of the Court.


JAMES G. CLYNES, J.S.C.

6/30/2025
DATE

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