

**Government Empls. Ins. Co. v Advanced Recovery
Equip. & Supplies, Inc.**

2025 NY Slip Op 32513(U)

July 7, 2025

Supreme Court, New York County

Docket Number: Index No. 158170/2024

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

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GOVERNMENT EMPLOYEES INSURANCE COMPANY,
INCLUDING ITS SUBSIDIARIES AND AFFILIATES, GEICO
GENERAL INSURANCE COMPANY, GEICO INDEMNITY
COMPANY AND GEICO CASUALTY COMPANY,

Plaintiff,

- v -

ADVANCED RECOVERY EQUIPMENT AND SUPPLIES,
INC., ADVANCED RECOVERY SOLUTION, INC., ALL CITY
FAMILY HEALTHCARE, INC., ALL CITY SURGICAL
SUPPLY, INC., ALLURE RECOVERY, INC., GLOBAL
HEALTH PHARMACY, CORP, ISLAND AMBULATORY
SURGERY CENTER, LLC, KINGS HIGHWAY
CHIROPRACTIC, P.C., LR MEDICAL, PLLC, MK DME,
INC., NYC COMMUNITY HOSPITAL OF BROOKLYN, PAIN
PHYSICIANS NY, PLLC, QUALITY CARE RX,
INC., SEDATION VACATION PERIOPERATIVE MEDICINE,
PLLC, FAISAL MEHMOOD

Defendant.

**DECISION + ORDER ON
MOTION**

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

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

Upon the foregoing documents, it is Plaintiff's motion for default judgment against Defendants ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, INC., ADVANCED RECOVERY SOLUTION, INC., ALL CITY SURGICAL SUPPLY, INC., ALLURE RECOVERY, INC., GLOBAL HEALTH PHARMACY, CORP, ISLAND AMBULATORY SURGERY CENTER, LLC, KINGS HIGHWAY CHIROPRACTIC, P.C., LR MEDICAL, PLLC, MK DME, INC., NYC COMMUNITY HOSPITAL OF BROOKLYN, PAIN PHYSICIANS NY, PLLC, QUALITY CARE RX, INC., SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, FAISAL MEHMOOD ("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 FAISAL MEHMOOD failure to

158170/2024 GOVERNMENT EMPLOYEES INSURANCE COMPANY, INCLUDING ITS
SUBSIDIARIES AND AFFILIATES, GEICO GENERAL INSURANCE COMPANY, GEICO
INDEMNITY COMPANY AND GEICO CASUALTY COMPANY vs. ADVANCED RECOVERY
EQUIPMENT AND SUPPLIES, INC. ET AL
Motion No. 001

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appear to two scheduled EUO's, Defaulting Defendants failure to appear or answer, and 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 March 21, 2022 under GEICO claim number 0439403070101062.

On March 21, 2022, Defendant/Claimant FAISAL MEHMOOD was struck by a reversing vehicle while operating a bicycle at or near East 15th Street in Brooklyn, New York. The police report notes that Mehmood received medical attention at the scene of the collision but was not removed from the scene via ambulance to a hospital. Shortly afterwards Plaintiff received applications for No-Fault Benefits from FAISAL MEHMOOD claiming FAISAL MEHMOOD sustained bodily injures from the collision totaling over \$97,000.

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]).

Plaintiff found these claims questionable and exercised its rights under the No-Fault regulations to request examinations under oath ("EUOs") of Defendant FAISAL MEHMOOD to determine the legitimacy of the loss and necessity of any alleged treatment. Plaintiff found FAISAL MEHMOOD not being removed from the scene by ambulance or taken to a hospital and later go to the hospital and receive significant treatment, the insured vehicle was only identified by license plate, there was an open question about what type of bicycle FAISAL MEHMOOD was operating as it could affect his status as an eligible injured person and that FAISAL MEHMOOD received over \$97,000 in medical treatment to warrant an investigation. Defendant FAISAL MEHMOOD was scheduled to appear for an EUO on two separate occasions and failed either.

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, Defendant FAISAL MEHMOOD defaulted by failing to appear to two scheduled EUO's. Only Defendant ALL CIY FAMILY HEALTHCARE, INC. answered plaintiff's verified complaint, the remaining Defaulting Defendants in failing to answer or appear are deemed to have admitted the allegations in Plaintiff's complaint.

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 Michael E. Tomsy, Frances Ragone, and Eduardo Barrantes and the documents attached to the affidavit, including copies of the EUO letters, and police report.

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 ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, INC., ADVANCED RECOVERY SOLUTION, INC., ALL CITY SURGICAL SUPPLY, INC., ALLURE RECOVERY, INC., GLOBAL HEALTH PHARMACY, CORP, ISLAND AMBULATORY SURGERY CENTER, LLC, KINGS HIGHWAY CHIROPRACTIC, P.C., LR MEDICAL, PLLC, MK DME, INC., NYC COMMUNITY HOSPITAL OF BROOKLYN, PAIN PHYSICIANS NY, PLLC, QUALITY CARE RX, INC., SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, FAISAL MEHMOOD; and it is further

ORDERED, ADJUDGED, and DECLARED that STATE FARM owes no duty to provide No-Fault reimbursements to Defendants ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, INC., ADVANCED RECOVERY SOLUTION, INC., ALL CITY SURGICAL

SUPPLY, INC., ALLURE RECOVERY, INC.,GLOBAL HEALTH PHARMACY, CORP, ISLAND AMBULATORY SURGERY CENTER, LLC, KINGS HIGHWAY CHIROPRACTIC, P.C., LR MEDICAL, PLLC, MK DME, INC., NYC COMMUNITY HOSPITAL OF BROOKLYN, PAIN PHYSICIANS NY, PLLC, QUALITY CARE RX, INC., SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, FAISAL MEHMOOD in connection with the alleged incident on March 21, 2022 (claim number 0439403070101062); and it is further

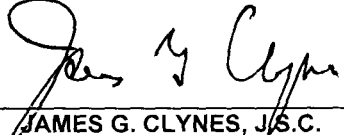
ORDERED that the Clerk is directed to enter judgment as against Defendants ADVANCED RECOVERY EQUIPMENT AND SUPPLIES, INC., ADVANCED RECOVERY SOLUTION, INC., ALL CITY SURGICAL SUPPLY, INC., ALLURE RECOVERY, INC.,GLOBAL HEALTH PHARMACY, CORP, ISLAND AMBULATORY SURGERY CENTER, LLC, KINGS HIGHWAY CHIROPRACTIC, P.C., LR MEDICAL, PLLC, MK DME, INC., NYC COMMUNITY HOSPITAL OF BROOKLYN, PAIN PHYSICIANS NY, PLLC, QUALITY CARE RX, INC., SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, FAISAL MEHMOOD; and it is further

ORDERED that the action is severed and continued against the answering defendant ALL CIY FAMILY HEALTHCARE, INC.; and it is further

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.

7/7/2025
DATE



JAMES G. CLYNES, J.S.C.

CHECK ONE: CASE DISPOSED GRANTED DENIED NON-FINAL DISPOSITION GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE