

Safeco Ins. Co. v Calder

2025 NY Slip Op 33027(U)

May 23, 2025

Supreme Court, New York County

Docket Number: Index No. 655223/2024

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 41M

Justice

-----X

SAFECO INSURANCE COMPANY, AMERICAN STATES
INSURANCE COMPANY,

Plaintiff,

INDEX NO. 655223/2024

MOTION DATE 12/20/2024

MOTION SEQ. NO. 001

- v -

ELTANYA CALDER, 28 SUPPLIES, INC., BEACH MEDICAL
REHABILITATION, PC, BUSINESS ART, INC., COMMUNITY
PHARMACY NY, LLC, CONNECTICUT ORTHOPAEDIC
SPECIALISTS, PC, DELTA K CORP., EAST COAST 17
CORP., GLOSS BK, INC., IN & OUT RX, INC., LITTLE NECK
EQUIPMENT, INC., NEXT GENERATION DIAGNOSTIC
IMAGING, PC, PROFICIENT REHAB CARE PT, PLLC, RAI
MEDICAL SERVICES, PC, RAPID EMS, LLC, SBH
PHYSICIANS, PC, ST. BARNABAS HOSPITAL, TOGO
MEDICAL SUPPLIES, INC., WELLSPRING SOLUTION,
LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 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

In this action for declaratory judgment, Plaintiffs, SAFECO INSURANCE COMPANY, AMERICAN STATES INSURANCE COMPANY (“Plaintiffs”), move for default judgment against Defendants 28 SUPPLIES, INC., BUSINESS ART, INC., COMMUNITY PHARMACY NY, LLC, CONNECTICUT ORTHOPAEDIC SPECIALISTS, PC, DELTA K CORP., EAST COAST 17 CORP., GLOSS BK, INC., IN & OUT RX, INC., LITTLE NECK EQUIPMENT, INC., NEXT GENERATION DIAGNOSTIC IMAGING, PC, PROFICIENT REHAB CARE PT, PLLC, RAPID EMS, LLC, TOGO MEDICAL SUPPLIES, INC., and WELLSPRING SOLUTION, LLC. (“Non-Answering Defendants”), for their failure to file an Answer to the

Complaint or appear in the action.¹ Following the Plaintiffs' filing of the motion, Defendants, IN & OUT RX, INC and COMMUNITY PHARMACY NY, LLC, filed their respective Answers on January 14, 2025 (NYSCEF Doc. No. 37) and on January 15, 2025 (NYSCEF Doc. No. 38), but have not opposed the motion.

A party is entitled to judgment pursuant to CPLR § 3215 where it files proof of service of its Summons and Complaint, proof of the facts constituting its claim, and proof of default (CPLR § 3215[f]; *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 [1st Dept 2016]). An insurer may assert a lack of coverage based on a material misrepresentation (Insurance Law § 3105). A misrepresentation is material if the insurer would not have issued the policy had it known the facts misrepresented (*Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 31 NY3d 569, 580 [2018]). To establish materiality as a matter of law, the insurer must present documentation concerning its underwriting practices, such as underwriting manuals, bulletins, or rules pertaining to similar risks, that show that it would not have issued the same policy if the correct information had been disclosed in the application (*Schirmer v Penkert*, 41 AD3d 688, 690 [2d Dept 2007]).

This action arises out of No-Fault claims submitted as a result of a rear-end motor vehicle incident that occurred on April 24, 2024, between Defendant Calder and two non-party individuals. After the alleged collision, Defendant Calder purportedly received medical treatment from the remaining Defendants ("Medical Provider Defendants") for her alleged injuries. The Medical Provider Defendants subsequently submitted No-Fault claims to Plaintiffs for the alleged treatment. Pursuant to their rights under the relevant policy and No-Fault regulations, Plaintiffs requested that Defendant Calder and Rohan Calder, Defendant Calder's husband, undergo an

¹ Plaintiff is not moving for a default judgment against the answering or appearing Defendants, ELTANYA CALDER, BEACH MEDICAL REHABILITATION, PC, RAIA MEDICAL SERVICES, PC, SBH PHYSICIANS, PC, and ST. BARNABAS HOSPITAL.

examination under oath (“EUO”) due to their belief of rate evasion. Defendant Calder and Rohan Calder appeared for their EUOs on June 25, 2024 (NYSCEF Doc. No. 29, 30). Plaintiffs allege that their testimonies contain material misrepresentations and inconsistencies regarding the garaging address of the insured vehicle when Defendant Calder applied for an insurance policy with Plaintiffs in order to obtain a lower premium rate. Plaintiffs allege that the EUO transcript was forwarded to Defendant Calder for signature but was not signed or returned.

Here, Plaintiffs are entitled to entry of a default judgment against the above-listed Non-Answering Defendants. Plaintiffs have properly filed proof of service of its Summons and Complaint and proof of default with respect to the non-answering Defendants, by submitting affidavits of service (NYSCEF Doc. No. 19) and proof that they complied with the additional mailing requirements of CPLR 3215 (g) (4) (NYSCEF Doc. No. 20). Plaintiffs establish the facts constituting their claim by submitting EUO scheduling letters (NSCEF Doc. No. 25, 27), the examination under oath transcripts (NYSCEF Doc. No. 29-30), the affidavit of Nora Hyde, an investigator in the Special Investigations Unit for Plaintiffs (NYSCEF Doc. No. 23), and the underwriter affirmation detailing the underlying allegations (NYSCEF Doc. No. 31).

Additionally, with regard to the filing of the late Answers by Defendants, IN & OUT RX, INC and COMMUNITY PHARMACY NY, LLC, Defendants failed to properly seek court approval for an extension of time to appear, answer, or to compel acceptance of their untimely answer, and have they offered any reasonable excuse for such delay or default (*see* CPLR § 3012). Defendants having failed to offer or show any reasonable excuse for the lack of timely filing, the court need not accept the Answers and may grant the Plaintiffs’ motion for a default judgment (*U.S. Bank N.A. v Barker Project LLC*, 220 AD3d 588, 588 [1st Dept 2023]; *Mar. v Montefiore Health Sys., Inc.*, 129 AD3d 428, 429 [1st Dept 2015]). As Plaintiffs have demonstrated

compliance with the statutory requirements of CPLR § 3215 *et. seq.*, and a showing of entitlement of entry of judgment for the Non-Answering Defendants, the motion for a default judgment is granted in its entirety.

Accordingly, it is

ORDERED that Plaintiffs' motion for default judgment against, Defendants 28 SUPPLIES, INC., BUSINESS ART, INC., COMMUNITY PHARMACY NY, LLC, CONNECTICUT ORTHOPAEDIC SPECIALISTS, PC, DELTA K CORP., EAST COAST 17 CORP., GLOSS BK, INC., IN & OUT RX, INC., LITTLE NECK EQUIPMENT, INC., NEXT GENERATION DIAGNOSTIC IMAGING, PC, PROFICIENT REHAB CARE PT, PLLC, RAPID EMS, LLC, TOGO MEDICAL SUPPLIES, INC., and WELLSPRING SOLUTION, LLC is granted without opposition; and it is further

ORDERED, ADJUDGED AND DECLARED that Plaintiffs owe no duty to afford, pay, or cover any no fault claims of Defendants, 28 SUPPLIES, INC., BUSINESS ART, INC., COMMUNITY PHARMACY NY, LLC, CONNECTICUT ORTHOPAEDIC SPECIALISTS, PC, DELTA K CORP., EAST COAST 17 CORP., GLOSS BK, INC., IN & OUT RX, INC., LITTLE NECK EQUIPMENT, INC., NEXT GENERATION DIAGNOSTIC IMAGING, PC, PROFICIENT REHAB CARE PT, PLLC, RAPID EMS, LLC, TOGO MEDICAL SUPPLIES, INC., and WELLSPRING SOLUTION, LLC with respect to the alleged collision of April 24, 2024, involving alleged injured party ELTANYA CALDER; and it is further

ORDERED, ADJUDGED AND DECLARED that all arbitrations and court hearings brought by Defendants, 28 SUPPLIES, INC., BUSINESS ART, INC., COMMUNITY PHARMACY NY, LLC, CONNECTICUT ORTHOPAEDIC SPECIALISTS, PC, DELTA K CORP., EAST COAST 17 CORP., GLOSS BK, INC., IN & OUT RX, INC., LITTLE NECK

EQUIPMENT, INC., NEXT GENERATION DIAGNOSTIC IMAGING, PC, PROFICIENT REHAB CARE PT, PLLC, RAPID EMS, LLC, TOGO MEDICAL SUPPLIES, INC., and WELLSPRING SOLUTION, LLC, arising from or related to the April 24, 2024 loss involving alleged injured party ELTANYA CALDER is hereby permanently stayed; and it is further

ORDERED, ADJUDGED AND DECLARED that Defendants, 28 SUPPLIES, INC., BUSINESS ART, INC., COMMUNITY PHARMACY NY, LLC, CONNECTICUT ORTHOPAEDIC SPECIALISTS, PC, DELTA K CORP., EAST COAST 17 CORP., GLOSS BK, INC., IN & OUT RX, INC., LITTLE NECK EQUIPMENT, INC., NEXT GENERATION DIAGNOSTIC IMAGING, PC, PROFICIENT REHAB CARE PT, PLLC, RAPID EMS, LLC, TOGO MEDICAL SUPPLIES, INC., and WELLSPRING SOLUTION, LLC, are permanently BARRED from bringing any arbitration or court hearing stemming from the alleged occurrence of April 24, 2024 involving alleged injured party ELTANYA CALDER; and it is further

ORDERED, ADJUDGED AND DECLARED that all of the Plaintiffs' denials of claims made by Defendants, 28 SUPPLIES, INC., BUSINESS ART, INC., COMMUNITY PHARMACY NY, LLC, CONNECTICUT ORTHOPAEDIC SPECIALISTS, PC, DELTA K CORP., EAST COAST 17 CORP., GLOSS BK, INC., IN & OUT RX, INC., LITTLE NECK EQUIPMENT, INC., NEXT GENERATION DIAGNOSTIC IMAGING, PC, PROFICIENT REHAB CARE PT, PLLC, RAPID EMS, LLC, TOGO MEDICAL SUPPLIES, INC., and WELLSPRING SOLUTION, LLC, including those annexed to Plaintiffs' motion, of all claims for No-Fault benefits stemming from the alleged occurrence of April 24, 2024, involving alleged injured party ELTANYA CALDER are valid; and it is further

ORDERED, ADJUDGED AND DECLARED, that the default does not apply to answering Defendants and shall have no preclusive or issue determinative effect with regard to the answering Defendants; and it is further

ORDERED, that the Plaintiffs serve this signed order upon all parties within 14 business days of entry of this order.

This constitutes the decision, order, and judgment of the court.


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5/23/2025
DATE

NICHOLAS W. MOYNE, J.S.C.

CHECK ONE:

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| <input type="checkbox"/> | GRANTED | <input type="checkbox"/> DENIED |

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| <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | |
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APPLICATION:

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| <input type="checkbox"/> | SETTLE ORDER |
| <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN |

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| <input type="checkbox"/> | SUBMIT ORDER | |
| <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFERENCE |

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