

**State Farm Mut. Auto. Ins. Co. v Advanced Recovery
Equip. & Supplies LLC**

2025 NY Slip Op 33310(U)

August 19, 2025

Supreme Court, New York County

Docket Number: Index No. 157012/2024

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

-----X

STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY,

Plaintiff,

INDEX NO. 157012/2024

MOTION DATE 1/23/2025

MOTION SEQ. NO. 001

- v -

ADVANCED RECOVERY EQUIPMENT AND SUPPLIES
LLC, et al.,

Defendant.

**DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52

were read on this motion to/for

JUDGMENT - DEFAULT

Plaintiff State Farm Mutual Automobile Insurance Company (State Farm) moves, pursuant to CPLR 3215, for leave to enter default judgment against all defendants, except for Advanced Recovery Equipment and Supplies LLC, Island Ambulatory Surgery Center LLC, LR Medical PLLC, Mark L. Ritch D.O. P.A., and Paul Ackerman MD (the answering defendants). The court notes that after this motion’s submission, a stipulation of discontinuance without costs was filed with respect to the following defendants: Contemporary Orthopedics PLLC, Mark L. Ritch D.O. P.A., and Precise Medical Solutions LLC only (the discontinued defendants) (NYSCEF Doc. No. [Doc] 53). Accordingly, the court’s discussion and decision and order generally does not reference the discontinued defendants.

By summons and verified complaint dated and efiled on August 1, 2024 (Docs 1, 41), State Farm seeks, *inter alia*, a declaratory judgment that it owes no duty to pay any and all no-fault claims arising from the underlying November 24, 2023 collision, which was assigned claim number 38-59S2-41M. State Farm alleges that the no-fault regulations have been violated because, *inter alia*, defendant Deroy Batista (Batista) failed to appear for a duly and properly scheduled examination under oath (EUO) on two occasions, a violation of a condition precedent for coverage.

Within one year of default, plaintiff brings this motion for default judgment, pursuant to CPLR 3215, against the defendants who were served with the summons and verified complaint

but failed to timely answer the summons and complaint or otherwise appear. These defendants are: Grand Avenue Services Inc.,¹ IA Chiropractic PLLC, Island Ambulatory Surgery Center LLC, Joint Journey Physical Therapy P.C., Medline Plus Pharmacy Inc., Mega Aid Pharmacy Inc., OM Strength Physical Therapy P.C., Sedation Vacation Perioperative Medicine PLLC, Silver Needle Acupuncture P.C., and Star Medical Diagnostic P.C. (collectively, the medical provider defendants), and Deroy Batista (Batista) (collectively, the defaulting defendants). Despite service of the motion papers (affirmation of service, Doc 50), the defaulting defendants did not oppose the motion. As to Batista, plaintiff also efiled the January 23, 2025 Status Report Pursuant to Servicemembers Civil Relief Act (Doc 47), which states that Batista is not on active duty, did not leave active duty within 367 days, and was not notified of a future call-up to active duty.

“A plaintiff moving for a default judgment based upon a defendant’s failure to appear must submit proof of service of the summons and complaint and proof of the facts constituting the claim” (*PV Holding Corp. v AB Quality Health Supply Corp.*, 189 AD3d 645, 646 [1st Dept 2020], citing CPLR 3215 [f]). “By failing to answer, the defaulting defendants are ‘deemed to have admitted’ the allegations in the complaint” (*State Farm Mut. Auto. Ins. Co. v Surgicore of Jersey City, LLC*, 195 AD3d 454, 455 [1st Dept 2021]).

Here, plaintiff submits proof of service of the summons and complaint, proof of the facts constituting the claim, and the notice of default. The affidavits of service demonstrate proper service of the summons and complaint (collectively submitted with the motion as Doc 42; see also Docs 2-6, 8-16, 18-20). As to Batista, the affidavit of service of the summons and complaint also provides that Batista was served personally, was not in military uniform and provided a negative reply to the process server’s question as to whether he was in active military service (Docs 4, 8). Plaintiff also submits the notice of default and affidavits of service of additional copies of the pleadings upon the defaulting defendants as required by CPLR 3215 (g) (4) (Doc 35). Plaintiff also submits counsel’s affirmation (Doc 37), which, *inter alia*, sets forth the defaulting defendant’s failure to timely answer or move as against the complaint. Counsel’s affirmation also points to the proper service of the summons and complaint and CPLR 3215 (g) (4) notices; the proof of facts set forth in the “EUO affirmation” of David F. Boucher, Jr., Esq., which includes Batista’s failure

¹ By letter dated November 7, 2024, plaintiff rejected the answer of defendant Grand Avenue Services Inc. (Grand) as untimely. Plaintiff stated that Grand was served on August 19, 2024, and its answer was dated and efiled on October 6, 2024 (Doc 34).

to appear at the scheduled and noticed Examinations under Oath (EUO); the Investigation Affirmation (Doc 40); the personal automobile policy of insurance (Policy) issued to Batista for the Insured Vehicle; applicable no-fault regulations; and the denial of coverage.

The EUO affirmation sets forth counsel's personal knowledge of Batista's failure to appear at his scheduled and noticed EUOs. Additionally the EUO affirmation sets forth and attaches, as applicable, the following, as maintained in the regular course of business and as part of counsel's regular practice: the applicable no-fault regulations; counsel's review of his file notes; letters dated March 13, 2024 and March 28, 2024 sent by certified mail, return receipt requested to Batista's counsel advising of the March 27, 2024 and April 23, 2024 scheduled EUOs. The Investigation Affirmation sets forth, *inter alia*, the investigation of the claim. The court does not consider Doc 39, which appears with, and addresses, a different case with a different caption and index number.

Plaintiff sufficiently establishes that Batista failed to appear for a properly noticed EUO on two occasions (*see Hertz Vehs., LLC v Alluri*, 171 AD3d 432, 432 [1st Dept 2019] [internal citation omitted]). Batista's failure to appear was a breach of a condition precedent to coverage and voids the policy ab initio (*see id.*).

For purposes of this default motion, the court finds that State Farm sufficiently set forth the basis for plaintiff's claims seeking a declaration of noncoverage against the defaulting defendants (*see CPLR 3215[f]; State Farm Mut. Auto. Ins. Co.*, 195 AD3d at 455-456).

Accordingly, it is

ORDERED that plaintiff's motion seeking a default judgment against the defaulting defendants is granted; and it is further

ORDERED, ADJUDGED and DECLARED that plaintiff has no duty to pay any no-fault benefits in the form of sums, monies, damages, awards or benefits to Grand Avenue Services Inc., IA Chiropractic PLLC, Island Ambulatory Surgery Center LLC, Joint Journey Physical Therapy P.C., Medline Plus Pharmacy Inc., Mega Aid Pharmacy Inc., OM Strength Physical Therapy P.C., Sedation Vacation Perioperative Medicine PLLC, Silver Needle Acupuncture P.C., Star Medical Diagnostic P.C. and defendant Deroy Batista, their agents, employees, assignees or heirs arising out of any current or future proceeding, including without limitation, arbitrations and lawsuits seeking to recover no-fault benefits with respect to the claims submitted in connection with the November 24, 2023 accident, referenced by claim number 38-59S2-41M; and it is further

ORDERED that this judgment shall have no effect as to defendants Advanced Recovery Equipment and Supplies LLC, Island Ambulatory Surgery LLC, LR Medical PLLC, and Paul Ackerman MD; and it is further

ORDERED that the action is severed and shall proceed against defendants Advanced Recovery Equipment and Supplies LLC, Island Ambulatory Surgery LLC, LR Medical PLLC, and Paul Ackerman MD; and it is further

ORDERED that, within twenty days after this decision and order is uploaded to NYSCEF, counsel for plaintiff shall serve a copy of this decision and order, with notice of entry, upon defendants, as well as the office of the County Clerk who shall enter judgment accordingly; and it is further

ORDERED that service upon the office of the County Clerk 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 at the address www.nycourts.gov/supctmanh).

This constitutes the Decision and Order of the Court.

8/19/2025
DATE


JAMES G. GLYNES, J.S.C.

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