

**Government Empls.' Ins. Co. v Advanced
Orthopaedics PLLC**

2025 NY Slip Op 33407(U)

August 19, 2025

Supreme Court, New York County

Docket Number: Index No. 157657/2024

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

GOVERNMENT EMPLOYEES' INSURANCE COMPANY,
Including its subsidiaries and affiliates, GEICO GENERAL
INSURANCE COMPANY, GEICO INDEMNITY COMPANY
and GEICO CASUALTY COMPANY,

Plaintiffs,

- v -

ADVANCED ORTHOPAEDICS PLLC, et. al.,

Defendants.

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INDEX NO. 157657/2024
MOTION DATE 03/21/2025
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

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

were read on this motion to/for JUDGMENT - DEFAULT

Plaintiff Government Employees Insurance Company, including its subsidiaries and affiliates, Geico General Insurance Company, Geico Indemnity Company and Geico Casualty Company (collectively "plaintiff") commenced this action seeking a declaratory judgment against defendants Chanelle Sessooms ("Sessooms"), Advanced Orthopaedics PLLC ("Advanced"), All City Family Healthcare Center Inc. ("All City Family"), Allure Recovery Inc. ("Allure"), Bay Ridge Orthopedic Associates P.C. ("Bay Ridge"), East Coast Med Group Inc. ("East Coast Med"), Heal It Medical Supply Inc. ("Heal It"), Interdependent Acupuncture PLLC ("Interdependent"), KV Medical of NY PC ("KV Medical"), Lenco Diagnostic Laboratories Inc. ("Lenco"), LR Medical PLLC ("LR"), Nexray Medical Imaging P.C. ("Nexray"), Pain Physicians NY PLLC ("Pain Physicians"), Quality Care RX Inc. ("Quality Care"), Right Choice Supply Inc. ("Right Choice"), Rutland Medical P.C. ("Rutland"), Sedation Vacation Perioperative Medicine PLLC ("Sedation Vacation"), and South Shore Osteopathic Medicine P.C. ("South Shore") (collectively "defendants"). In its complaint, plaintiff alleges that defendants are ineligible to receive no-fault reimbursements because Sessooms breached a condition precedent to coverage, as established

under the insurance policy and the no-fault regulation 11 NYCRR § 65-1.1., by failing to appear for scheduled examinations under oath (“EUO”).

In the current motion, plaintiff moves for a default judgment against all the defendants except for South Shore (collectively “nonanswering defendants”), pursuant to CPLR 3215, for failing to appear or answer the summons and complaint. Plaintiff also moves to permanently stay all arbitrations, lawsuit and/or claims against the nonanswering defendants. For the reasons stated below, plaintiff’s motion for a default judgment is granted.

BACKGROUND FACTS AND PROCEDURAL HISTORY

Plaintiff handles New York no-fault claims and issued a car insurance policy (“the policy”) for a 2006 Ford (“the insured car”), covering occupants of the insured car for any medically and causally related medical expenses arising out of the insured’s car use and operation during a car accident (NYSCEF Doc No. 25, Barrantes affirmation ¶¶ 5, 10, 12). The policy also covers personal injuries arising out of the use or operation of the insured car in New York State (*id.*, ¶ 12).

The policy and the New York no-fault regulation under 11 NYCRR 65-1.1, provide the following conditions in pertinent part:

“Conditions

1. ACTION AGAINST COMPANY

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with the terms of this coverage.

. . . Upon request by the Company, the eligible injured person or that person assignee or representative shall: . . .

(b) as may reasonably be required to submit examinations under oath by any person named by the Company and subscribe the same” (*id.*, ¶¶ 13-14; 11 NYCRR 65-1.1).

Further, the policy states in relevant part: “[a]n insured or any other person seeking coverage under this policy must submit to examination under oath by any person named by us when and as often as we require” (*id.*, ¶ 14; *see also* 11 NYCRR 65-1.1). Both the policy and the no-fault regulation provide that plaintiff is entitled to all necessary items that it needs to verify the claim from the parties from which it requests such verification (*id.*, ¶ 15; 11 NYCRR 65-1.1).

On January 25, 2020, Sessooms was driving the insured car and was involved in a car accident with another driver (“subject car accident”) (*id.*, ¶ 10). In the police accident report, Sessooms alleged that she stopped at a stop sign and when she proceeded to drive, another car rear-ended hers (NYSCEF Doc No. 29, Barrantes affirmation, exhibit c, police accident report; NYSCEF Doc No. 30, Barrantes affirmation, exhibit d, Sessoom’s no-fault application). The other involved driver alleged that they watched Sessooms’s car stop at a stop sign, drive and then stop suddenly causing the accident (NYSCEF Doc No. 29).

On February 1, 2020, Sessooms filed a no-fault benefit application claiming that during the subject accident she sustained injuries on her lower back, left hip and neck (NYSCEF Doc No. 30). Plaintiff received Sessooms’s no-fault benefits application on February 18, 2020, and assigned number 00668759420000001 for the claim (NYSCEF Doc No. 25, ¶ 21). Sessooms received treatment for the alleged injuries from the nonanswering and answering defendants, who submitted over \$50,000 in bills to plaintiff for the treatments allegedly provided (*id.*, ¶ 16). This amount is one of the reasons why plaintiff investigated Sessooms’s claim, as it sought to confirm “the details of the loss (and) the legitimacy of the injuries” (NYSCEF Doc No. 24, Boucher affirmation, pp. 12-14).

On March 2, 2020, plaintiff sought an EUO from Sessooms to confirm the details of the loss by sending a letter to the address she provided when filing her no-fault benefit claim (NYSCEF Doc No. 25, ¶ 18; *see also* NYSCEF Doc No. 31, Barrantes affirmation, exhibit e). The scheduled March 19, 2020 EUO, however, did not take place due to Covid-19 (NYSCEF Doc No. 26, Ragone affirmation, ¶ 10).

On June 10, 2020, plaintiff sent Sessooms a letter scheduling her for an EUO on July 10, 2020 (NYSCEF Doc No. 26, ¶ 11). Sessooms did not appear for the scheduled July 10, 2020 EUO, but informed plaintiff that she is represented by the Law Office of Michael Berenati (NYSCEF Doc No. 25, ¶ 19). Plaintiff, however, did not receive a letter of representation from Sessoom’s alleged attorney (*id.*). Sessoom was again scheduled for an EUO on August 3, 2020, by a letter sent to her address on July 16, 2020 and to her attorney’s address, but failed to appear again (NYSCEF Doc No. 26, ¶ 14; *see also* NYSCEF Doc No. 31). Plaintiff then denied Sessooms’s no-fault benefit claim due to her failure to appear for the scheduled EUOs and its belief that Sessooms’s injuries did not arise from the accident (NYSCEF Doc No. 25, ¶ 24).

Plaintiff filed this lawsuit on August 20, 2024. Defendant South Shore answered the complaint on January 12, 2025. The other defendants failed to answer or appear on the case, so plaintiff filed the current motion for a default judgment.

DISCUSSION

To obtain a default judgment, the movant is required to submit proof of (1) service of process of the summons and complaint, (2) proof of the facts constituting the claim, and (3) the non-moving party's default (CPLR 3215; *see also Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023] ["A party seeking a default judgment must submit proof of service of the summons and the complaint and 'proof of the facts constituting the claim, the default and the amount due'"]). CPLR 3215(f) governs the proof that must be submitted in an application for a default judgment (CPLR 3215 [f]).

The proof of service of the summons and complaint can be shown through "an affidavit of service by a process server with direct knowledge of the service" (CPLR 3215) and such affidavit of service "constitutes prima facie evidence of proper service" (*HSBC Bank USA v Gifford*, 224 AD3d 447 [1st Dept 2024]). The affidavit should specify, among other things, the papers served, the date and time, the person served, the address and the way service was made (CPLR 306).

Here, plaintiff has shown that it completed the service of process on the non-answering defendants. The affidavit of service sworn on September 27, 2024 shows that plaintiff served with process the nonanswering defendants Advanced, All City Family, Allure, Bay Ridge, East Coast Med, Heal It, Interdependent, KV Medical, Lenco, LR, Nexray, Pain Physicians, Quality Care, Right Choice, Rutland, and Sedation Vacation, by delivering a notice of electronic filing and two copies of summons and complaint to the secretary of state (NYSCEF Doc No. 28, Barrantes affirmation, exhibit b, affirmations of services). Service of process of domestic corporations and limited liability companies can be made "on the secretary of state as agent of a domestic . . . corporation" (*see* CPLR 311; CPLR 311-a; Business Corporation Law 306; CPLR 306).

Plaintiff also satisfied the CPLR 3215 (g) (4) notice requirement to serve an additional copy of the summons on the domestic corporations (CPLR 3215 [g] [4]). Plaintiff served a notice of default, with annexed copies of the summons and complaint, to the nonanswering corporations at their last known address on March 21, 2025 (NYSCEF Doc No. 33, Barrantes affirmation, exhibit g). As to the limited liability nonanswering defendants, even though CPLR 3215 (g) (4)

does not refer to limited liability companies, compliance with the section is required when seeking a default judgment against limited liability companies (*see Wonder Works Const. Corp. v RCDolner, LLC*, 44 AD3d 526, 526 [1st Dept 2007]).

Service of process on Sessooms was completed as well, as plaintiff delivered a notice of electronic filing and two copies of the summons and complaint on her at her last known address, on September 30, 2024 (NYSCEF Doc No. 28).

Plaintiff also submitted sufficient facts constituting the claim of breach of condition precedent under the policy and the no-fault regulation. Under 11 NYCRR 65-1.1, a party or the assignee must submit evidence of the claim for medical treatment. Upon receiving such verification form used as proof of a claim, the insurer may seek further verification within 15 business days from receipt of the verification of treatment form (11 NYCRR 65-3.5; *see also Hospital for Joint Diseases v Travelers Prop. Cas. Ins. Co.*, 9 NY3d 312, 317 [2007] [“an insurer has 15 business days within which to request ‘any additional verification required by the insurer to establish proof of claim’”]). The verification form required by 11 NYCRR 65-3.5 (b), however, is not the claimant’s application for no-fault benefits, also known as NF-2 form (*State Farm Mut. Auto. Ins. Co. v AK Global Supply Corp.*, 203 AD3d 556 [1st Dept 2022]; *see also* 11 NYCRR 65-3.5).

Notwithstanding the 15-business day requirement for further verification under 11 NYCRR 65-3.5, a “plaintiff [is] entitled to request an EUO *prior to its receipt*” of a claim form (*Mapfre Ins. Co. of New York v Manoo*, 140 AD3d 468, 469 [1st Dept 2016] [citations omitted] [emphasis added]). “The notification requirements for verification requests under 11 NYCRR 65-3.5 and 65-3.6 do not apply to EUOs that are scheduled prior to the insurance company's receipt of a claim form” (*Mapfre Ins. Co. of New York*, 140 AD3d at 469 [citations omitted]; *see also State Farm Mut. Auto. Ins. Co. v Surgicore of Jersey City, LLC*, 195 AD3d 454, 456 [1st Dept 2021]).

Through two affidavits and documents attached therein, plaintiff sufficiently demonstrates that Sessooms failed to appear for two timely scheduled EUOs. Plaintiff argues that the EUOs to Sessooms were timely because they were served prior to receiving the verification forms. The documentary evidence shows that Plaintiff served the EUO on Sessooms on March 2, 2020, after receiving Sessooms’s no-fault benefits application on February 18, 2020. Because the 11 NYCRR 65-3.5 and 65-3.6’s notification requirements for verification requests do not apply to EUOs that

are scheduled prior to the insurance company's receipt of a claim form (*Mapfre Ins. Co. of New York*, 140 AD3d at 469), plaintiffs EUOs to Sessooms were timely. Plaintiff further showed that Sessooms failed to appear for the scheduled EUOs, demonstrating facts constituting the claim of breach of condition precedent under the policy and the no-fault regulation. “[T]he failure of a person eligible for no-fault benefits to appear for a ‘properly noticed’ Examination Under Oath (EUO) on two separate occasions constitutes a breach of a condition precedent and will vitiate coverage” (*PV Holding Corp. v AB Quality Health Supply Corp.*, 189 AD3d 645, 646 [1st Dept 2020] [citations omitted]). Plaintiff’s defense is also available against the other nonanswering defendants who accepted assignments of Sessooms’s no-fault benefits because “[a]n assignee ‘stands in the shoes’ of an assignor and thus acquires no greater rights than its assignor” (*American States Ins. Co. v Huff*, 119 AD3d 478, 479 [1st Dept 2014]).

Plaintiff established default for the nonanswering defendants through its attorney’s affirmation stating that nonanswering defendants failed to appear or answer the complaint, (NYSCEF Doc No. 24, ¶ 46). Additionally, the case docket further supports the non-answering defendants’ default because it shows that neither Sessooms nor the other nonanswering defendants have appeared on the case nor answered the complaint. “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] [citations omitted]).

The court also grants the branch of plaintiff’s motion to permanently stay all arbitrations against nonanswering defendants as plaintiff submitted sufficient facts constituting the claim of breach of condition precedent under the policy and the no-fault regulation by Sessooms (*Lumbermens Mut. Cas. Co. v Moyler*, 211 AD2d 401, 401-402 [1st Dept 1995] [citations omitted]; *see also Matter of State Farm Ins. Co. v Velasquez*, 211 AD2d 636, 637 [2d Dept 1995] [citations omitted]; *Matter of Home Indem. Co. v Messana*, 139 AD2d 513, 513-514 [2d Dept 1988] [citations omitted]).

The court has considered plaintiff’s remaining contentions and finds them unavailing.

CONCLUSION and ORDER

Accordingly, it is

ORDERED that plaintiff Government Employees Insurance Company, including its subsidiaries and affiliates, Geico General Insurance Company, Geico Indemnity Company and Geico Casualty Company's motion for default judgment based on breach of a condition precedent of the subject policy and no-fault coverage is granted against defendants Chanelle Sessooms, Advanced Orthopaedics PLLC, All City Family Healthcare Center Inc., Allure Recovery Inc., Bay Ridge Orthopedic Associates P.C., East Coast Med Group Inc., Heal It Medical Supply Inc., Interdependent Acupuncture PLLC, KV Medical of NY PC, Lenco Diagnostic Laboratories Inc., LR Medical PLLC, Nexray Medical Imaging P.C., Pain Physicians NY PLLC, Quality Care RX Inc., Right Choice Supply Inc., Rutland Medical P.C., and Sedation Vacation Perioperative Medicine PLLC in regards to the subject car accident, claim no. 00668759420000001; and it is further

ORDERED that plaintiff Government Employees Insurance Company, including its subsidiaries and affiliates, Geico General Insurance Company, Geico Indemnity Company and Geico Casualty Company, owes no duty to provide no-fault reimbursements to defendants Chanelle Sessooms, Advanced Orthopaedics PLLC, All City Family Healthcare Center Inc., Allure Recovery Inc., Bay Ridge Orthopedic Associates P.C., East Coast Med Group Inc., Heal It Medical Supply Inc., Interdependent Acupuncture PLLC, KV Medical of NY PC, Lenco Diagnostic Laboratories Inc., LR Medical PLLC, Nexray Medical Imaging P.C., Pain Physicians NY PLLC, Quality Care RX Inc., Right Choice Supply Inc., Rutland Medical P.C., and Sedation Vacation Perioperative Medicine PLLC in regards to the subject car accident, claim no. 00668759420000001; and it is further

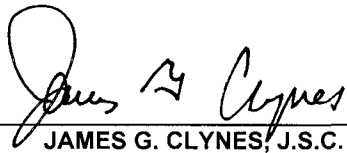
ORDERED that arbitration is permanently stayed against defendants Chanelle Sessooms, Advanced Orthopaedics PLLC, All City Family Healthcare Center Inc., Allure Recovery Inc., Bay Ridge Orthopedic Associates P.C., East Coast Med Group Inc., Heal It Medical Supply Inc., Interdependent Acupuncture PLLC, KV Medical of NY PC, Lenco Diagnostic Laboratories Inc., LR Medical PLLC, Nexray Medical Imaging P.C., Pain Physicians NY PLLC, Quality Care RX Inc., Right Choice Supply Inc., Rutland Medical P.C., and Sedation Vacation Perioperative Medicine PLLC; and it is further

ORDERED that the Clerk is directed to enter judgment as against defendants Chanelle Sessooms, Advanced Orthopaedics PLLC, All City Family Healthcare Center Inc., Allure

Recovery Inc., Bay Ridge Orthopedic Associates P.C., East Coast Med Group Inc., Heal It Medical Supply Inc., Interdependent Acupuncture PLLC, KV Medical of NY PC, Lenco Diagnostic Laboratories Inc., LR Medical PLLC, Nexray Medical Imaging P.C., Pain Physicians NY PLLC, Quality Care RX Inc., Right Choice Supply Inc., Rutland Medical P.C., and Sedation Vacation Perioperative Medicine PLLC; and it is further

ORDERED that the action is severed and continued against the answering defendant South Shore Osteopathic Medicine P.C..

This constitutes the Decision and Order of the Court.

8/19/2025			
DATE			JAMES G. CLYNES, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<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