

Liberty Mut. Ins. Co. v Crawley

2025 NY Slip Op 33600(U)

September 30, 2025

Supreme Court, New York County

Docket Number: Index No. 659451/2024

Judge: Judy H. Kim

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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**

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LIBERTY MUTUAL INSURANCE COMPANY, LIBERTY
MUTUAL PERSONAL INSURANCE COMPANY,

Plaintiffs,

- v -

KANIQUA CRAWLEY, B SOLIMAN CHIROPRACTIC
PC,CAREMED DME, CENTURION MIDTOWN
ANESTHESIA PLLC,EMPIRE STATE AMBULATORY
SURGERY, FIFTH AVENUE SURGERY CENTER
LLC,GLOBAL SURGERY CENTER LLC,HUDSON
TRANSPORATION, INFINITE SUPPLY GROUP INC,
LONGEVITY MEDICAL SUPPLY INC, NEW LOTS RX
PLUS CORP, NEW YORK CITY FIRE DEPARTMENT,
NEXTSTEP HEALING INC, PHARMACY ON GRAND INC,
PORTAL MEDICAL PC,PRECISE U.S DIAGNOSTIC
CHIROPRACTIC PC,PROGRESSIVE HUDSON
ANESTHESIA, RIGHT CHOICE SUPPLY INC., RYAN D
TICHAUER, SBH PHYSICIANS PC,SEDATION
VACATION PERIOPERATIVE MEDICINE PLLC,SEFWAT
R SHENOUDA, SIMCHA MEDICAL SUPPLY CORP, SKY
RADIOLOGY PC,SOUTH BRONX MEDICAL
REHABILITATION, PC,ST BARNABAS HOSPITAL,
SUMMER PHYSICAL THERAPY, SUNRISE MEDICAL
GROUP INC., TAPIK MED DISTRIBUTION CORP, UK
SINHA PHYSICIAN PC,WORLD RX PHARMACY INC.,

Defendants.

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INDEX NO. 659451/2024

MOTION DATE 03/13/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15,
16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29

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

Upon the foregoing documents, the motion of plaintiffs Liberty Mutual Insurance
Company and Liberty Mutual Personal Insurance Company for a default judgment against certain
defendants is granted, in part, and for the reasons set forth below.

FACTUAL BACKGROUND

In this action, plaintiff seeks a declaratory judgment that it is not obligated to pay no-fault benefits for the medical treatment of Kaniqua Crawley for injuries that she allegedly sustained in a motor vehicle accident on March 4, 2024, based upon her failure to cooperate with post Examination Under Oath (“EUO”) demands.

Plaintiff now moves for a default judgment against non-answering defendants Crawley, Caremed DME Centurion, Centurion Midtown Anesthesia PLLC, Empire State Ambulatory Surgery, Global Surgery Center LLC, Hudson Transportation Infinite Supply Group Inc., New Lots RX Plus Corp., New York City Fire Department, Nextstep Healing Inc., Portal Medical PC, Precises U.S Diagnostic Chiropractic PC, Progressive Hudson Anesthesia, Right Choice Supply Inc., Sedation Vacation Perioperative Medicine PLLC, Sefwat R. Shenouda, Sky Radiology PC, Tapik Med Distribution Corp., and UK Sinha Physician PC. Plaintiffs also seek a permanent stay of any arbitration or court proceeding brought by the non-answering defendants for No-Fault benefits related to the accident, a permanent injunction barring any such arbitration or court proceeding, and a declaration that their denial of No-Fault claims related to the accident are valid.

The non-answering defendants have not answered or otherwise appeared in this action and have not submitted opposition to the motion.

DISCUSSION

As a threshold matter, the motion is denied as against defendant New York City Fire Department, who was discontinued from this action by stipulation dated May 28, 2025, two months after the filing of this motion (NYSCEF Doc No. 32, stipulation of discontinuance).

In order to establish its entitlement to a default judgment pursuant to CPLR 3215 (f), the movant must submit proof of: (1) service of the summons and complaint; (2) the facts constituting

the claim; and (3) defendants' default in answering or appearing (*see Gordon Law Firm, P.C. v Premier DNA Corp.*, 205 AD3d 416, 416 [1st Dept 2022]). Where, as here, service was effected on certain corporate or limited liability company defendants via the New York State Secretary of State pursuant to BCL §306 or §303, plaintiff is also required, pursuant to CPLR 3215(g)(4), to establish its additional service of the summons and complaint by first class mail at these defendants' last known address (*see Sterk-Kirch v Uptown Communications & Elec, Inc.*, 124 AD3d 413, 414 [1st Dept 2015] [corporate defendants]; *Wonder Works Constr. Corp. v RCDolner*, 44 AD3d 526, 526 [1st Dept 2007] [limited liability company defendants]).

As to the first statutory requirement, plaintiffs submit affidavits of service documenting their service of the summons and complaint on Crawley on December 20, 2024, via CPLR 308(1) through personal delivery (NYSCEF Doc No. 4, affidavit of service), as well as proof of her non-military service by submitting a report from the Department of Defense Manpower Data Center (NYSCEF Doc No. 17, affirmation of non-military service). Plaintiffs also submit affidavits of service documenting their service of the summons and complaint on the remaining corporate and limited liability company defendants on December 19, 2024 via the New York Secretary of State (NYSCEF Doc 4, affidavits of service), as well as the additional mailing on these defendants, as required by CPLR 3215 (g) (4), on December 31, 2024 (NYSCEF Doc No. 16, affidavit of additional mailing).

Plaintiffs have established proof of the facts constituting their claim through the affirmations of Thomas Riesgaard, an investigator in Liberty Mutual's Special Investigations and Amanda Ferencz, a Claims Department Team Manager for Liberty Mutual, detailing the basis for the denial of medical coverage in connection with the accident. These individuals attest that, although Crawley appeared for her EUO on July 1, 2024 (NYSCEF Doc No. 21, transcript of

EUO), she failed to comply with the following post-EUO requests for information which were issued on July 3, 2024 and August 5, 2024: (1) phone and text records from February 2024 to June 21, 2024; (2) copies of text messages between Crawley and Mikhail Hayden, the owner of the car involved in the accident, since the day of the accident; and (3) all phone numbers (and related text messages) that Hayden has used to attempt to get in contact with Crawley since the day of the accident (NYSCEF Doc Nos. 22, post-EUO document requests; *see also* NYSCEF Doc No. 19, Riesgaard affirm at ¶10; NYSCEF Doc No. 25, Ferencz affirm at ¶¶5, 13). Plaintiffs further allege that no response to the requested documentation has been provided, and that, subsequently, Crawley's claim was denied for non-cooperation (NYSCEF Doc No. 19, Riesgaard affirm at ¶¶11-15). Accordingly, plaintiffs have demonstrated that they have no duty to pay defendants' claims in connection with the alleged accident based upon a claimant's failure to comply with a condition precedent to coverage under the applicable policy by cooperating with plaintiffs' investigation (*see Hertz Corp. v Active Care Med. Supply Corp.*, 124 AD3d 411, 411 [1st Dept 2015]). Failure to cooperate with a carrier's investigation into a no-fault claim warrants a declaration of noncoverage (*State Farm Mut. Auto. Ins. Co. v All City Family Healthcare Ctr., Inc.*, 206 AD3d 584, 585 [1st Dept 2022]). As such, plaintiffs are also entitled to the stay and permanent injunction that they seek (*see Liberty Mut. Ins. Co. v DeJoie*, 2024 NY Slip Op 32711[U], ** 4 [Sup Ct, NY County 2024]).

Finally, plaintiffs have established defendants' default through the affirmation of its counsel, Joseph F. McCabe, Esq. (NYSCEF Doc No. 12, affirmation, ¶ 17). While defendant Portal Medical filed two separate answers on March 26, 2025 and March 31, 2025 (NYSCEF Doc Nos. 30 and 31, answers), these filings after the submission of plaintiffs' motion for a default judgment are nullities (*see Estrella v Herrera*, 23 AD3d 320, 321 [1st Dept 2005]).

In light of the foregoing, it is

ORDERED that the motion of plaintiffs Liberty Mutual Insurance Company and Liberty Mutual Personal Insurance Company for a default judgment against non-answering defendants Kaniqua Crawley, Caremed DME Centurion, Centurion Midtown Anesthesia PLLC, Empire State Ambulatory Surgery, Global Surgery Center LLC, Hudson Transportation Infinite Supply Group Inc., New Lots RX Plus Corp., Nextstep Healing Inc., Portal Medical PC, Precises U.S Diagnostic Chiropractic PC, Progressive Hudson Anesthesia, Right Choice Supply Inc., Sedation Vacation Perioperative Medicine PLLC, Sefwat R. Shenouda, Sky Radiology PC, Tapik Med Distribution Corp., and UK Sinha Physician PC is granted; and it is further

ORDERED, ADJUDGED, and DECLARED that claimant Kaniqua Crawley breached a condition precedent to coverage as established by the No-Fault regulations and the subject policy of insurance and accompanying No-Fault endorsement by failing to respond to post-EUO document demands; and it is further

ORDERED, ADJUDGED, and DECLARED that plaintiffs Liberty Mutual Insurance Company and Liberty Mutual Personal Insurance Company have no duty to provide, pay, or honor any current or future claims by non-answering defendants Kaniqua Crawley, Caremed DME Centurion, Centurion Midtown Anesthesia PLLC, Empire State Ambulatory Surgery, Global Surgery Center LLC, Hudson Transportation Infinite Supply Group Inc., New Lots RX Plus Corp., Nextstep Healing Inc., Portal Medical PC, Precises U.S Diagnostic Chiropractic PC, Progressive Hudson Anesthesia, Right Choice Supply Inc., Sedation Vacation Perioperative Medicine PLLC, Sefwat R. Shenouda, Sky Radiology PC, Tapik Med Distribution Corp., and UK Sinha Physician PC., including but not limited to claims for Mandatory Personal Injury Protection (No-Fault), Additional Personal Injury Protection, Uninsured/Underinsured Motorist Coverage, and

Supplemental Uninsured/Underinsured Motorist Coverage, in connection with the alleged collision of March 4, 2024, referenced by Liberty Mutual Claim No. LA275-056291350-0002; and it is further

ORDERED, ADJUDGED and DECLARED that each and every part of any arbitration or court proceeding brought by the non-answering defendants for No-Fault benefits stemming from the alleged collision of March 4, 2024 involving Kaniqua Crawley is permanently stayed; and it is further

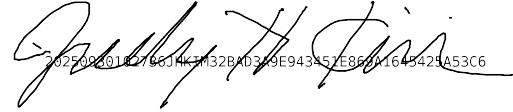
ORDERED, ADJUDGED and DECLARED that the non-answering defendants are permanently enjoined from bringing any arbitration or court hearing brought by the non-answering defendants for No-Fault benefits stemming from the alleged collision of March 4, 2024 involving Kaniqua Crawley; and it is further

ORDERED that this action is severed and shall proceed against defendants B Soliman Chiropractic, P.C., Fifth Avenue Surgery Center LLC, Longevity Medical Supply Inc., Pharmacy on Grand, Inc., Ryan D. Tichauer, SBH Physicians PC, Simcha Medical Supply Corp., South Bronx Medical Rehabilitation, PC, St. Barnabas Hospital, Summer Physical Therapy, P.C., Sunrise Medical Group Inc., and World RX Pharmacy Inc.; and it is further

ORDERED that plaintiff shall, within twenty days from the date of this decision and order, serve a copy of same with notice of entry upon defendants and upon the Clerk of the Court, who is directed to enter judgment accordingly; and it is further

ORDERED that such service upon the Clerk of the Court 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).

This constitutes the decision and order of the Court.



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9/30/2025

DATE

HON. JUDY H. KIM, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE