

**Hertz Vehs., LLC v Alignment Chiropractic, P.C.**

2025 NY Slip Op 33627(U)

September 30, 2025

Supreme Court, New York County

Docket Number: Index No. 157368/2024

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**

-----X  
HERTZ VEHICLES, LLC,

Plaintiff,

- v -

ALIGNMENT CHIROPRACTIC, P.C., BAY RIDGE RX,  
INC., EQE ENTERPRISES CORP., FIVE TOWNS  
PHYSICIANS, P.C., IA CHIROPRACTIC, PLLC, JOINT  
JOURNEY PHYSICAL THERAPY, P.C., LIFE PT, P.C., LR  
MEDICAL, PLLC, MEDLINE PLUS PHARMACY,  
INC., METROPOLITAN MEDICAL & SURGICAL,  
P.C., MOUNT OLYMPUS IMAGING, LLC, OM STRENGTH  
PHYSICAL THERAPY, P.C., ROCKAWAY PARK  
MEDICAL, P.C., SILVER NEEDLE ACUPUNCTURE,  
P.C., SKILLMAN CHEMISTS CORP., SPECTRUM  
DIAGNOSTIC IMAGING, P.C., STAR MEDICAL  
DIAGNOSTIC, P.C., UNIQUE A, INC., YEURI FLEURI,  
SHIRLEY CHARLES, CARLINE LOURENT,

Defendants.  
-----X

INDEX NO. 157368/2024

MOTION DATE 03/24/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44

were read on this motion for JUDGMENT - DEFAULT.

Upon the foregoing documents, plaintiff Hertz Vehicle Inc.'s motion for a default judgment is granted, in part, on default, as against defendants Yeuri Fleuri and Shirley Charles, and for the reasons set forth below. Plaintiff's motion to amend the complaint is also granted. Plaintiff's motion for a default judgment as against the remaining defendants is denied.

**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 defendants Yeuri Fleuri, Shirley Charles and Carline Lourent for injuries that they allegedly sustained in a motor vehicle collision on February 23, 2024 while

occupants of a 2023 Hyundai, owned and self-insured by Hertz, based upon plaintiff's founded belief that the injuries alleged did not arise out of that collision, and that the loss was intentionally caused by the Hertz vehicle.

Plaintiff now moves for a default judgment against defendants Alignment Chiropractic, P.C., Bay Ridge RX, Inc., EQE Enterprises Corp, Five Town Physicians, P.C., IA Chiropractic, PLLC, Joint Journey Physical Therapy, P.C., Life PT, P.C., LR Medical, PLLC, Medline Plus Pharmacy, Inc., Metropolitan Medical & Surgical, P.C., Mount Olympus Imaging, LLC, OM Strength Physical Therapy, P.C., Rockaway Park Medical, P.C., Silver Needle Acupuncture, P.C., Skillman Chemists Corp, Spectrum Diagnostic Imaging, P.C., Star Medical Diagnostic, P.C., Unique A, Inc., Yeuri Fleuri and Shirley Charles<sup>1</sup>. Plaintiff does not move for a default judgment as against defendant Carline Lourent, as she could not be located for service.

Plaintiff also moves, pursuant to CPLR 3025 (b), for leave to amend the complaint to add Health Heaven Services, Inc., Health Wellness Medical Services PLLC, Jar Medical Supplies, LLC, Ocean Chemists Inc., Remodel Net Services Inc., Sedation Vacation Perioperative Medicine PLLC, St Anthony Medical & Diagnostic P.C., Tem Otho, Inc., the New York Community Hospital of Brooklyn, Inc. and Triborous ASC, LLC, as additional defendants.

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<sup>1</sup> Although defendant Skillman Chemists Corp. filed an answer on November 15, 2024 (NYSCEF Doc No. 23, answer), plaintiff rejected this answer as untimely, pursuant to CPLR 2101 (f) (NYSCEF Doc No. 24, notice of rejection). In addition, while defendants Five Town Physicians PC, EQE Enterprises Corp. and Unique A, Inc. filed an answer on May 25, 2025 (NYSCEF No. 45, answer), as this filing was months after the submission of plaintiff's motion on March 24, 2025 (NYSCEF Doc No. 26, notice of motion), it is a nullity (*see Estrella v Herrera*, 23 AD3d 320, 321 [1<sup>st</sup> Dept 2005]).

## DISCUSSION

### *Motion for a Default Judgment*

Plaintiff's motion for a default judgment is granted, in part. 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 [1<sup>st</sup> 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 [1<sup>st</sup> Dept 2015] [corporate defendants]; *Wonder Works Constr. Corp. v RCDolner*, 44 AD3d 526, 526 [1<sup>st</sup> Dept 2007] [limited liability company defendants]).

As a threshold matter, the motion for a default judgment is denied as against defendants Alignment Chiropractic, P.C., Bay Ridge RX, Inc., EQE Enterprises Corp., Five Town Physicians, P.C., IA Chiropractic, PLLC, Joint Journey Physical Therapy, P.C., Life PT, P.C., LR Medical, PLLC, Medline Plus Pharmacy, Inc., Metropolitan Medical & Surgical, P.C., Mount Olympus Imaging, LLC, OM Strength Physical Therapy, P.C., Rockaway Park Medical, P.C., Silver Needle Acupuncture, P.C., Skillman Chemists Corp., Spectrum Diagnostic Imaging, P.C., Star Medical Diagnostic, P.C., and Unique A, Inc. Although plaintiff submits affidavits of service documenting its service of the summons and complaint on these defendants on September 26, 2024 via the New York Secretary of State (NYSCEF Doc Nos. 2-14, 16-20, affidavits of service), plaintiff fails to submit any documentation of the additional mailing of the summons and complaint on these

corporate and limited liability company defendants that is required by CPLR 3215(g). Accordingly, service on these defendants was ineffective, and thus, the motion for a default judgment as against these defendants must be denied (*see TCA Global Credit Master Fund, L.P. v Puresafe Water Sys., Inc.*, 151 AD3d 1098, 1100 [2d Dept 2017] [denying motion for a default judgment on ground that “the plaintiff failed to demonstrate compliance with the additional service requirements of CPLR 3215 (g) (4)” on the corporate defendants]; *149 East 57 Aldo LLC v. Grafe LLC*, 2025 WL 1840162, \* 1 [Sup Ct, NY County 2025] [“The motion for default judgment against Defendant Grafe LLC is denied for failure to comply with CPLR 3215 (g) (4). As Defendant Grafe LLC was served via the Secretary of State under Limited Liability Company Law § 303, additional service of the summons and complaint was required, however Plaintiff has proffered no such proof of service”]).

However, the motion for a default judgment is granted with respect to individual defendants Yeuri Fleuri and Shirley Charles as plaintiff has satisfied the required criteria. Plaintiff submits affidavits of service documenting its service of the summons and complaint on Fleuri on September 24, 2024, via CPLR 308(1) through personal delivery (NYSCEF Doc No. 21, affidavit of service), and on Charles on the same date, via CPLR 308(2), by serving the papers on Fleuri, her husband and a person of suitable age and discretion, and then mailing them to her last known address (NYSCEF Doc No. 15, affidavit of service and mailing). Plaintiff also submits proof of these defendants’ non-military service (*see* affidavits of service).

In addition, plaintiff has demonstrated that it has no duty to pay defendants’ claims in connection with the alleged accident. A No-Fault insurer may disclaim coverage based upon “the fact or founded belief that the alleged injury does not arise out of an insured incident” (*Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 199 [1997]). In meeting this burden, a No-

Fault insurer is “not required to establish that the subject collision was the product of fraud, which would require proof of all elements of fraud, including scienter, by clear and convincing evidence” (*V.S. Med. Servs., P.C. v Allstate Ins. Co.*, 25 Misc 3d 39, 41 [App Term, 2d Dept 2009] [internal citation omitted]). Rather, the No-Fault insurer must demonstrate the facts elicited during an investigation that makeup the founded belief (*id.*; see also *Repwest Ins. Co. v Sasan Family Chiropractic, P.C.*, 2016 NY Misc LEXIS 2774 [Sup Ct, NY County 2016]). Circumstantial evidence is sufficient to prove such facts if a party’s conduct “may be ‘reasonably inferred’ based upon ‘logical inferences to be drawn from the evidence’” (*Benzaken v Verizon Communications, Inc.*, 21 AD3d 864, 865 [2d Dept 2005] [citation omitted]). Moreover, a “deliberate collision caused in furtherance of an insurance fraud scheme is not a covered event” (*State Farm Mut. Auto Ins. Co. v Laguerre*, 305 AD2d 490, 491 [2d Dept 2003]).

Here, plaintiff has established proof of the facts constituting its claim through the affirmation of Molly Griffiths, a No-Fault claims adjuster employed by ESIS, Inc., a third-party administrator for Hertz and Hertz Vehicles, LLC (NYSCEF Doc No. 28, claims affirmation), Griffiths states that the claim was investigated for the following reasons: there was minor damage to the Hertz vehicle, the Hertz vehicle was rented on the day of the loss at 9:45 p.m. and the loss occurred at approximately 10:25 p.m., only 40 minutes later, the police report states that none of the occupants of the Hertz vehicle sustained any injuries, and the attorney that represents Fleuri and Charles is notorious for representing individuals involved in staged or intentionally caused losses (*id.* at ¶27). Moreover, the adverse driver, Woody Sainrose, an off-duty NYPD officer, stated in an affirmation that the loss was intentionally caused by the Hertz vehicle for the purposes of insurance fraud, nobody was injured at the scene, and that at the time of the loss, there were only two occupants of the vehicle, both young females (*id.* at ¶ 29). Griffiths avers that, based on

Sainrose's statement, it is clear that both Laurent, an older female, and Fleuri, a male, were not in the Hertz vehicle at the time of the loss (*id.*). Griffiths also avers that the EUO testimony of Fleuri and Charles regarding how the loss occurred is not credible, in that the claimants are all alleging significant physical injuries, despite the minor nature of the collision, and the police report stating that none of them were injured at the scene (*id.*). Griffiths concludes that “[b]ased upon the circumstances stated above, Hertz maintains a founded belief that the alleged injuries of the Eligible Injured Parties did not arise from an insured incident (*id.* at ¶30) and that “the loss was intentionally caused by the Hertz vehicle” (*id.* at ¶32). This is sufficient to establish the basis for plaintiff's founded belief that the injuries alleged did not arise out of the February 23, 2024 collision, and that the loss was intentionally caused by the Hertz vehicle (*see Hereford Ins. Co. v Interdependent Acupuncture PLLC*, 234 AD3d 410, 411 [1st Dept 2025]; *State Farm Mut. Auto. Ins. Co. v AK Glob. Supply Corp.*, 203 AD3d 556 [1st Dept 2022]).

Finally, plaintiff has established the individual defendants' default through the affirmation of its counsel, David F. Boucher, Jr., Esq. (NYSCEF Doc No. 27, Boucher, Jr. affirmation at ¶40). “By failing to answer, the defaulting defendants ‘are deemed to have admitted’ the allegations in the complaint, including that the accident was intentional and staged” (*State Farm Mut. Auto. Ins. Co. v Surgicore of Jersey City, LLC*, 195 AD3d 454, 455 [1<sup>st</sup> Dept 2021] [citation omitted]; *see generally Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 70-71 [2003]).

#### *Motion to Amend the Complaint*

Plaintiff's motion for leave to amend the complaint is granted. Pursuant to CPLR 3025 (b), “[a] party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties.” As a general proposition, leave to amend pleadings “should be freely granted” (*RBP of 400 W42 St.*,

*Inc. v 400 W. 42<sup>nd</sup> St. Realty Assoc.*, 27 AD3d 250, 250 [1st Dept 2006]). On a motion for leave to amend, the moving party must establish “that the proffered amendment is not palpably insufficient or clearly devoid of merit” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 500 [1<sup>st</sup> Dept 2010]; *accord Miller v Cohen*, 93 AD3d 424, 425 [1st Dept 2012]) and does not prejudice or surprise the opposing party (*McCaskey, Davies & Assoc. v New York Health & Hosps. Corp.*, 59 NY2d 755, 757 [1983]; *accord McGhee v Odell*, 96 AD3d 449, 450 [1st Dept 2012]). Indeed, “[t]he party opposing the motion to amend must overcome a heavy presumption of validity in favor of the moving party” (*Otis El. Co. v 1166 Ave. of Ams. Condominium*, 166 AD2d 307, 307 [1st Dept 1990]; *see also Loewentheil v White Knight, Ltd.*, 71 AD3d 581, 581 [1st Dept 2010]).

Plaintiff asserts that, through a good-faith mistake, medical providers Health Heaven Services, Inc., Health Wellness Medical Services PLLC, Jar Medical Supplies, LLC, Ocean Chemists Inc., Remodel Net Services Inc., Sedation Vacation Perioperative Medicine PLLC, St Anthony Medical & Diagnostic P.C., Tem Otho, Inc., the New York Community Hospital of Brooklyn, Inc. and Triborous ASC, LLC were inadvertently omitted as defendants in the complaint (Boucher affirmation, ¶ 42). Plaintiff further asserts that, after this action was filed, it received additional medical bills on this claim from these providers that were not included in the complaint (*id.*). As such, plaintiff seeks leave to amend the complaint to add these parties as defendants (NYSCEF Doc No. 40, proposed amended complaint).

As the proposed amended complaint, seeking to add new healthcare provider defendants who sent medical bills to plaintiff on this claim after the complaint was filed, is not “palpably insufficient or clearly devoid of merit” (*Dziura v Human Dev. Assn., Inc.*, 231 AD3d 615, 616 [1st Dept 2024] [citation omitted] [granting motion for leave to amend complaint to add additional defendants]; *see also Lucky of 195 Madison St. Roofing & Contracting Inc. v Creif 109 LLC*, 189

AD3d 481, 483 [1st Dept 2020] [same]). No defendants have responded to the motion for leave to amend, and thus, have failed to demonstrate any prejudice caused by the proposed amendment.

In light of the foregoing, it is

**ORDERED** that plaintiff Hertz Vehicles, Inc.'s motion for a default judgment is denied without prejudice as against defendants Alignment Chiropractic, P.C., Bay Ridge RX, Inc., EQE Enterprises Corp, Five Town Physicians, P.C., IA Chiropractic, PLLC, Joint Journey Physical Therapy, P.C., Life PT, P.C., LR Medical, PLLC, Medline Plus Pharmacy, Inc., Metropolitan Medical & Surgical, P.C., Mount Olympus Imaging, LLC, OM Strength Physical Therapy, P.C., Rockaway Park Medical, P.C., Silver Needle Acupuncture, P.C., Skillman Chemists Corp, Spectrum Diagnostic Imaging, P.C., Star Medical Diagnostic, P.C., and Unique A, Inc., with leave to re-submit upon proof of proper service upon such defendants in compliance with CPLR 3215 (g) (4) (i); and it is further

**ORDERED** that plaintiff Hertz Vehicles, Inc.'s motion for a default judgment is granted as against defendants Yeuri Fleuri and Shirley Charles; and it is further

**ORDERED, ADJUDGED, and DECLARED** that plaintiff Hertz Vehicles, Inc. has no duty to provide, pay, or honor any current or future claims by defendants Yeuri Fleuri and Shirley Charles, 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 February 23, 2024, referenced by Hertz claim number 1M01M013636886; and it is further

**ORDERED** that this action is severed and shall proceed against defendants Alignment Chiropractic, P.C., Bay Ridge RX, Inc., EQE Enterprises Corp, Five Town Physicians, P.C., IA Chiropractic, PLLC, Joint Journey Physical Therapy, P.C., Life PT, P.C., LR Medical, PLLC, Medline Plus Pharmacy, Inc., Metropolitan Medical & Surgical, P.C., Mount Olympus Imaging, LLC, OM Strength Physical Therapy, P.C., Rockaway Park Medical, P.C., Silver Needle Acupuncture, P.C., Skillman Chemists Corp, Spectrum Diagnostic Imaging, P.C., Star Medical Diagnostic, P.C., Unique A, Inc. and Carline Laurent; and it is further

**ORDERED** that plaintiff's motion to amend the complaint is granted, and the amended complaint in the form annexed to the moving papers shall be deemed served upon service of a copy of this order with entry thereof; and it is further

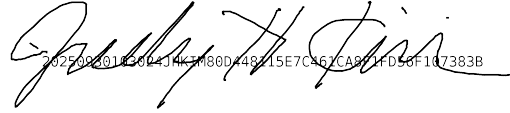
**ORDERED** that defendants Health Heaven Services, Inc., Health Wellness Medical Services PLLC, Jar Medical Supplies, LLC, Ocean Chemists Inc., Remodel Net Services Inc., Sedation Vacation Perioperative Medicine PLLC, St Anthony Medical & Diagnostic P.C., Tem Otho, Inc., the New York Community Hospital of Brooklyn, Inc. and Triborous ASC, LLC shall serve a response to the amended complaint or otherwise respond thereto within twenty days from the date of said service; 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