

**Government Empls. Ins. Co. v 21st Century
Chiropractic Care**

2025 NY Slip Op 34418(U)

November 13, 2025

Supreme Court, New York County

Docket Number: Index No. 155450/2024

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

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INDEX NO. 155450/2024

GOVERNMENT EMPLOYEES INSURANCE COMPANY, INCLUDING ITS SUBSIDIARIES AND AFFILIATES, GEICO GENERAL INSURANCE COMPANY, GEICO INDEMNITY COMPANY AND GEICO CASUALTY COMPANY,

MOTION DATE 03/17/2025

MOTION SEQ. NO. 001

Plaintiff,

- v -

21ST CENTURY CHIROPRACTIC CARE, ABDU CARE, P.T., P.C., ASTORIA ORGANIX PHARMACY, INC., AVENTURA CHIROPRACTIC, P.C., BEST CARE PHARMACY CORP, DV CHIROPRACTIC CARE, P.C., INTERVENTIONAL PHYSICAL MEDICINE AND REHABILITATION, P.C., LTV ASSOCIATES INC., DR. KATE CINGEL, NEW YORK CITY FIRE DEPT EMS, NEW YORK CITY HEALTH AND HOSPITAL, PETER C. KWAN, M.D., P.C., SAINT BARNABAS HOSPITAL, IRENEO NOLASCO PENAFIEL

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, Plaintiff's motion for default judgment against Defendants 21ST CENTURY CHIROPRACTIC CARE, ABDU CARE, P.T., P.C. ASTORIA ORGANIX PHARMACY, INC., AVENTURA CHIROPRACTIC, P.C., BEST CARE PHARMACY CORP, DV CHIROPRACTIC CARE, P.C., and LTV ASSOCIATES INC. (the defaulting defendants).

Plaintiff discontinued this action against defendants PETER C. KWAN, M.D., P.C. (NYSCEF DOC NO 16) and SAINT BARNABAS HOSPITAL (NYCEF DOC NO 36) and withdrew the motion as against Defendants New York City Fire Dept EMS and New York City Health and Hospital is withdrawn (NYSCEF DOC NO 35).

In this action for a declaratory judgment, Plaintiff's seeks a declaratory judgment that it has no obligation to provide no-fault benefits to any of the remaining defendant medical providers

for services rendered to claimant defendant IRENEO NOLASCO PENEFIEL (PENEFIEL) because PENEFIEL breached a condition precedent to coverage by failing to appear for two scheduled examination under oaths relating to claimed alleged injuries arising from an April 2, 2022 motor vehicle accident to which GEICO assigned claim number 8756525700000001 under an insurance policy issued by GEICO.

Defendant INTERVENTIONAL PHYSICAL MEDICINE & REHABILITATION, P.C. timely answered Plaintiff's verified complaint (NYSCEF DOC NO 2).

On April 2, 2022, PENAFIEL as a pedestrian was allegedly struck by an unknown vehicle, on Valentine Avenue in Bronx, New York and taken to a local hospital for treatment. As per the police report, PENAFIEL stated he only remembers the vehicle being a Black SUV. After the incident, medical providers treating PENAFIEL began sending bills for treatment to GEICO.

11 NYCRR 65-1.1 requires that full compliance by an eligible injured person with the terms of coverage in a No-Fault policy is a condition precedent to all claims against an insurance company under the relevant policy. A claimant's failure to submit to an EUO constitutes a breach of a condition precedent to coverage under a No-Fault policy and vitiates the policy (*Hertz Corp. v Active Care Med. Supply Corp.*, 124 AD3d 411 [1st Dept 2015]). An insurer must establish that it requested EUOs in accordance with the procedures and time frames in the No-Fault regulations (11 NYCRR § 65-3.5) in order to deny a claim where a claimant-defendant fails to appear for an EUO (*Unitrin*, 82 AD3d at 560; *American Tr. Ins. Co. v Longevity Med. Supply, Inc.*, 131 AD3d 841, 841-42 [1st Dept 2019]).

Plaintiff found the police report being devoid of any information concerning the driver or plate information to warrant an investigation and deduced there was no evidence connecting the GEICO insured vehicle to the April 2, 2022, incident. Plaintiff finding the police report lacking information on the vehicle which allegedly struck PENAFIEL as well as the bills received questionable, exercised its rights under the No-Fault regulations to request examinations under oath ("EUOs") of PENAFIEL to determine the legitimacy of the loss and necessity of any alleged treatment. PENAFIEL was scheduled to appear for an EUO on two separate occasions and failed to appear at either.

An insurer may assert a lack of coverage defense based on the fact or founded belief that a claimant's alleged injury did not arise out of a covered incident (*Cent. Gen. Hosp. v Chubb Group*

of *Ins. Cos.*, 90 NY2d 195, 201 [1997]). In demonstrating the facts supporting its founded belief, an insurer may present circumstantial evidence to prove such facts, provided that a reasonable inference can be drawn from them (*Benzaken v Verizon Communications, Inc.*, 21 AD3d 864, 865 [2d Dept 2005], quoting *Staples v Sisson*, 274 AD2d 779, 781 [3d Dept 2000]). A defaulting defendant is deemed to have admitted the allegations in a plaintiff's complaint by its failure to answer (*State Farm Mut. Auto. Ins. Co. v Surgicore of Jersey City*, 195 AD3d 454, 455 [1st Dept 2021]).

Here, PENAFIEL defaulted by failing to appear at two EUO's and are deemed to have admitted the allegations in Plaintiff's verified complaint.

On September 12, 2024, Plaintiff discontinued the action against defendants Peter C. Kwan, M.D., P.C. (NYSCEF DOC NO 16) and St. Barnabas Hospital (NYSCEF DOC NO 36). Plaintiff, by stipulation, withdrew the portion of the motion seeking default judgment against Defendants New York City Fire Dept EMA and New York City Hospital and accepted their answer (NYSCEF DOC NO 35).

A plaintiff moving for default judgment must establish proper service on defendant; defendant's default; and the facts constituting plaintiff's claims. (CPLR 3215 [f].) Plaintiff has established proper service upon the defaulting defendants, and the defaulting defendants have not appeared or answered in this action. Plaintiff has sufficiently proven the facts constituting its claim for default-judgment through the affidavit of Michael E. Tomsy and attached exhibits.

The motion is granted without opposition. Accordingly, it is

ORDERED that the Plaintiff's motion for default judgment in this action seeking a declaratory judgment disclaiming plaintiff's obligation to pay no-fault benefits to the remaining defendants based on breach of a condition precedent is granted against Defendants 21ST CENTURY CHIROPRACTIC CARE, ABDU CARE, P.T., P.C. ASTORIA ORGANIX PHARMACY, INC., AVENTURA CHIROPRACTIC, P.C., BEST CARE PHARMACY CORP, DV CHIROPRACTIC CARE, P.C., and LTV ASSOCIATES INC.; and it is further

ORDERED, ADJUDGED, and DECLARED that Plaintiff owes no duty to provide No-Fault reimbursements to Defendants 21ST CENTURY CHIROPRACTIC CARE, ABDU CARE, P.T., P.C. ASTORIA ORGANIX PHARMACY, INC., AVENTURA CHIROPRACTIC, P.C., BEST CARE PHARMACY CORP, DV CHIROPRACTIC CARE, P.C., LTV ASSOCIATES

INC. PC in connection with the alleged incident on April 2, 2022 (GEICO claim number 8756525700000001); and it is further

ORDERED that the Clerk is directed to enter judgment as against Defendants 21ST CENTURY CHIROPRACTIC CARE, ABDU CARE, P.T., P.C. ASTORIA ORGANIX PHARMACY, INC., AVENTURA CHIROPRACTIC, P.C., BEST CARE PHARMACY CORP, DV CHIROPRACTIC CARE, P.C., and LTV ASSOCIATES INC.; and it is further

ORDERED that Plaintiff is directed to serve a copy of this Decision and Order with notice of entry within twenty days, and it is further

ORDERED that the action is severed and continued against defendants NEW YORK CITY FIRE DEPT EMS, NEW YORK CITY HEALTH AND HOSPITAL, INTERVENTIONAL PHYSICAL MEDICINE & REHABILITATION, P.C., DR. KATE CINGEL and IRENEO NOLASCO PENAFIEL.

This constitutes the Decision and Order of the Court.

James G. Clynes

JAMES G. CLYNES, J.S.C.

11/13/2025
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
			<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