

**Palisades Ins. Co. v Brighton Custom Supply Inc.**

2025 NY Slip Op 34604(U)

December 1, 2025

Supreme Court, New York County

Docket Number: Index No. 159510/2024

Judge: Phaedra F. Perry-Bond

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35
Justice

INDEX NO. 159510/2024
MOTION DATE 06/06/2025
MOTION SEQ. NO. 001

PALISADES INSURANCE COMPANY,
Plaintiff,

- v -

BRIGHTON CUSTOM SUPPLY INC., BRONX MEDICAL SERVICES 21, P.C., CAREMED DME, INC., INJURY CARE CHIROPRACTIC, P.C., IN PLACE PHYSICAL THERAPY, P.C., NEXT GENERATION DIAGNOSTIC IMAGING, P.C., PEOPLE'S CHOICE PHARMACY NY CORP, RECOVERY P.T. REHAB, P.C., TOTAL ORTHOPEDICS AND SPORTS MEDICINE, LLP and ZOEY ROJAS,

DECISION + ORDER ON MOTION

Defendants.

The following e-filed documents, listed by NYSCEF document number (Motion Seq 001) 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31, additional NYSCEF document numbers 13 and 14, were read on this motion to/for DEFAULT JUDGMENT.

Upon the foregoing documents, plaintiff, Palisades Insurance Company's (Plaintiff), motion for default judgment is granted as against Bronx Medical Services 21, P.C., CAREMED DME, Inc., Injury Care Chiropractic, P.C., In Place Physical Therapy, P.C., and Next Generation Diagnostic Imaging, P.C., and is otherwise denied without prejudice.

Procedural History

Currently, in this insurance coverage case, Plaintiff moves for a default judgment against Brighton Custom Supply Inc. (Brighton), Bronx Medical Services 21, P.C., CAREMED DME, Inc., Injury Care Chiropractic, P.C., In Place Physical Therapy, P.C., Next Generation Diagnostic Imaging, P.C., People's Choice Pharmacy NY Corp., Recovery P.T. Rehab, P.C., Total Orthopedics and Sports Medicine, LLP, and Zoey Rojas. According to the complaint (NYSCEF Doc. No. 19), although defendant Ms. Rojas claimed serious injuries resulting from an incident in which Plaintiff insured's vehicle struck her, there was no evidence of damage to the vehicle, Ms. Rojas' testimony about the accident was inconsistent and not credible, and the driver of the vehicle that Plaintiff insured denied that his car struck Ms. Rojas. Additionally, among other things,

Plaintiff states that Ms. Rojas did not seek medical attention when the alleged accident occurred but subsequently submitted what Plaintiff deems to be a suspicious level of claims. Based on the above, Plaintiff asserts that it has a founded belief that Ms. Rojas' asserted injuries were not the result of an insured incident (*id.*, ¶ 26). As a result, Plaintiff seeks a declaration that it does not owe a duty to pay the No-Fault claims of the nine defendants in this action and a permanent stay of all arbitrations, lawsuits and/or claims by defendants relating to any and all No-Fault claims related to the April 8, 2024 incident at issue.

### Discussion

Pursuant to CPLR § 3215(f), an application for default judgment must include proof of: (1) service of the summons and complaint; (2) the defendant's default; and (3) the facts constituting the claim and the amount due. (See *Joosten v Gale*, 129 AD2d 531, 534 [1st Dept 1987]; *231st Riverdale LLC v 7 Star Home Furniture Inc.*, 198 AD3d 524, 525 [1st Dept 2021]; *Beltre v Babu*, 32 AD3d 722, 723–724 [1st Dept 2006]).

Here, Plaintiff has submitted proof of service of the complaint on all named defendants and also has filed a nonmilitary affidavit as to Ms. Rojas. In addition, it submits a copy of the police report, which demonstrates that the parties provided differing statements regarding the occurrence and that Plaintiff's insured was issued an oath summons; a copy of Ms. Rojas' EUO testimony; and an affidavit by the insured, Jean Pierre Hilaire, who states that although his car did not strike Ms. Rojas, she approached his vehicle, slapped the hood of his car, and claimed the opposite. Finally, Plaintiff provides a copy of the notice of default that it sent to six of the defendants: Brighton, Bronx Medical Services 21, P.C., Caremed DME, Inc., Injury Care Chiropractic, P.C., In Place Physical Therapy, P.C., and Next Generation Diagnostic Imaging, P.C.

The suggestion in Palisade's affirmation in support of its motion is that despite proper service, all defendants are in default (*see* NYSCEF Doc. No. 17, ¶ 23). It states that "the Defaulting Defendants have no reasonable excuse for their months of continuing default after they were served with the Summons and Verified Complaint and the Notice of Default," and that therefore the court need not consider whether they have a meritorious defense.

The court grants default judgment with respect to Bronx Medical Services 21, P.C., CAREMED DME, Inc., Injury Care Chiropractic, P.C., In Place Physical Therapy, P.C., and Next Generation Diagnostic Imaging, P.C. but denies judgment as against Brighton, People's Choice Pharmacy NY Corp., Recovery P.T. Rehab, P.C., Total Orthopedics and Sports Medicine, LLP, and Ms. Rojas. First, although Plaintiff sent a notice of default to several of the corporate defendants pursuant to Business Corporation Law BCL §306, it appears that it did not send such

notice to People's Choice Pharmacy NY Corp., Recovery P.T. Rehab, P.C., Total Orthopedics and Sports Medicine, LLP. Further, there is no explanation for the lack of notice.

Second, although the motion papers suggest that all defendants are in default, Brighton actually filed an answer to the complaint (NYSCEF Doc. No. 13), which Plaintiff did not include in its motion papers. Plaintiff sent a letter to Brighton that rejected the answer because the latter filed the answer over five months after the service of the complaint, stating that if Brighton provided it with a reasonable excuse for the delay and showed a meritorious defense, it "might reconsider its position" (NYSCEF Doc. No. 14). Because Plaintiff does not mention Brighton's answer or its letter, and because Plaintiff does not state whether Brighton responded to its letter, the record is deficient. Further, as Plaintiff discussion in support of the motion does not acknowledge this attempt by Brighton and instead states, without elaboration, that it "defaulted," it has not made out a prima facie case against Brighton. Third, there is no explanation as to why a follow up notice was not sent to Ms. Rojas.

The court grants default judgment with respect to Bronx Medical Services 21, P.C., CAREMED DME, Inc., Injury Care Chiropractic, P.C., In Place Physical Therapy, P.C., and Next Generation Diagnostic Imaging, P.C., but denies the motion as against Brighton, People's Choice Pharmacy NY Corp., Recovery P.T. Rehab, P.C., Total Orthopedics and Sports Medicine, LLP, and Ms. Rojas, for the reasons stated above.

Accordingly, it is hereby

ORDERED that Plaintiff's motion for default judgment is **granted as against** Bronx Medical Services 21, P.C., CAREMED DME, Inc., Injury Care Chiropractic, P.C., In Place Physical Therapy, P.C., and Next Generation Diagnostic Imaging, P.C., and is **otherwise denied without prejudice**; and it is further

ADJUDGED and DECLARED that Plaintiff is not obliged to provide a defense to or coverage for Bronx Medical Services 21, P.C., CAREMED DME, Inc., Injury Care Chiropractic, P.C., In Place Physical Therapy, P.C., and Next Generation Diagnostic Imaging, P.C. relating to any and all No-Fault claims arising from the April 8, 2024 incident; and it is further

ORDERED that Plaintiff's motion for default judgment seeking a permanent stay of all arbitrations, lawsuits, and/or claims related to the April 8, 2024 incident is granted as to Bronx Medical Services 21, P.C., CAREMED DME, Inc., Injury Care Chiropractic, P.C., In Place Physical Therapy, P.C., and Next Generation Diagnostic Imaging, P.C., and is otherwise denied without prejudice; and it is further

ADJUDGED and DECLARED that Bronx Medical Services 21, P.C., CAREMED DME, Inc., Injury Care Chiropractic, P.C., In Place Physical Therapy, P.C., and Next Generation Diagnostic Imaging, P.C. are permanently stayed from commencing any arbitrations, lawsuits, and/or claims relating to any and all No-Fault claims related to the April 8, 2024 incident; and it is further

ORDERED that the motion is denied without prejudice as against Brighton, People's Choice Pharmacy NY Corp., Recovery P.T. Rehab, P.C., Total Orthopedics and Sports Medicine, LLP, and Ms. Rojas; and it is further

ORDERED that the action shall continue as to the remaining defendants.

This constitutes the Decision and Order of the Court.

12/ / 2025  
DATE

  
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PHAEDRA F. PERRY-BOND, J.S.C.

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