

**Government Empls. Ins. Co. v 10 of 10 Medsupply,
Corp**

2025 NY Slip Op 34726(U)

October 7, 2025

Supreme Court, New York County

Docket Number: Index No. 152755/2025

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

INDEX NO. 152755/2025

MOTION DATE 07/03/2025

MOTION SEQ. NO. 001

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

Plaintiff,

- v -

10 OF 10 MEDSUPPLY, CORP, A AND O MEDICAL SUPPLY, INC., A2K NY CORP, ALTERMEDIC PRODUCTS, INC., ANDY BENCHEMMAR, LCSW, ATLANTIC MEDICAL AND DIAGNOSTIC, P.C., BETTER MEDICAL HEALTH, P.C., BUSINESS ART, INC., CHI CHINESE ACUPUNCTURE, P.C., DOLEO MED PRODUCTS, CORP, DROZ MED SUPPLY, CORP, DS MEDICAL DIAGNOSTIC, P.C., EAST TREMONT MEDICAL CENTER, GLOSS BK, INC., GO FOR MED SUPPLY CORP, HANK ROSS MEDICAL, P.C., LR MEDICAL, PLLC, PHARMACY ON GRAND, INC., QUEENS MEDICAL PROFESSIONAL, P.C., RIGHT CHOICE SUPPLY, INC., ROCKAWAY MEDICAL NY, P.C., SANFORD RADIOLOGY, P.C., SHAARE TZION IMAGING, LLC, URGENT PHYSICAL THERAPY, P.C., VITAL CRAFT OS, LLC, WELLSPRING SOLUTION, LLC, MICHAEL SERRANT

DECISION + ORDER ON MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, Plaintiff's motion for default judgment against Defendants 10 OF 10 MEDSUPPLY, CORP, A AND O MEDICAL SUPPLY, INC, A2K NY CORP, ALTERMEDIC PRODUCTS, INC, ATLANTIC MEDICAL AND DIAGNOSTIC, P.C., BETTER MEDICAL HEALTH, P.C., BUSINESS ART, INC, CHI CHINESE ACUPUNCTURE, P.C., DOLEO MED PRODUCTS, INC, DROZ MED SUPPLY, CORP, GLOSS BK, INC, GO FOR MED SUPPLY CORP, HANK ROSS MEDICAL, P.C., LR MEDICAL, PLLC, QUEENS

152755/2025 GOVERNMENT EMPLOYEES INSURANCE COMPANY, INCLUDING ITS SUBSIDIARIES AND AFFILIATES, GEICO GENERAL INSURANCE COMPANY, GEICO INDEMNITY COMPANY AND GEICO CASUALTY COMPANY vs. 10 OF 10 MEDSUPPLY, CORP ET AL Motion No. 001

MEDICAL PROFESSIONAL, P.C., RIGHTCHOICE SUPPLY, INC, ROCKAWAY MEDICAL NY, P.C., SANFORD RADIOLOGY, P.C., URGENT PHYSICAL THERAPY, P.C., VITAL CRAFT OS, LLC, and WELLSRING SOLUTION, LLC (“defaulting defendants”) is granted without opposition.

In this action Plaintiff seeks a declaratory judgment disclaiming No-Fault coverage based upon a breach of a condition precedent to No-Fault coverage by the failure of Defendant MICHAEL SERRANT to appear to two scheduled Examinations Under Oath (“EUO’s”). Plaintiff seeks default judgment against the defaulting defendants failure to appear or answer, and founded belief that the collision was not a covered incident and no obligation to provide liability coverage for the alleged incident arising out of the June 13, 2024 under Geico claim number 0547967080101020.

On June 13, 2024, Defendant MICHAEL SERRANT was struck by a 2001 Nissan driven by Geico insured driver Jean Claude Placide while Defendant was riding an E-Bike. Nearly a month after the collision, Plaintiff received an application for No-Fault Benefits from Defendant MICHAEL SERRANT claiming he sustained bodily injuries from the collision.

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-defendant’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 these claims questionable and exercised its rights under the No-Fault regulations to request examinations under oath (“EUOs”) of Defendant MICHAEL SERRANT to determine the legitimacy of the loss and necessity of any alleged treatment. Plaintiff found Defendant MICHAEL SERRANT operating an E-Bike but not addressing what kind of E-Bike, the police report containing conflicting narratives as to fault and a lack of photographs of the E-Bike proper to the collision to warrant an investigation. Defendant MICHAEL SERRANT was scheduled to appear for an EUO on two separate occasions and failed to appear to 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]).

Defendants EAST TREMONT MEDICAL CENTER a/a/o MICHAEL SERRANT, PHARMACY ON GRAND, INC., DS MEDICAL DIAGNOSTIC, P.C., SHAARE TZION IMAGING, LLC. Are the only defendants to answer.

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 shown that it properly served the defaulting defendants and none of the defaulting defendants appeared or answered in this action and the time to do so has expired. As such, the defaulting defendants are in default of this proceeding. “By virtue of this default, defendants are deemed to

have admitted all factual allegations contained in the verified complaint and all reasonable inferences that flow from them.” Thus, as a matter of law the issue of liability has been determined in Defendant/Third-Party Plaintiff favor (*Paez v 1610 Saint Nicholas Ave. L.P.*, 113 AD3d 523 [1st Dept 2014]). Here, Plaintiff has sufficiently proven the facts constituting its claim for default-judgment against the defaulting defendants through the affidavit of Michael E. Tomsky and attached exhibits.

The motion is granted without opposition. Accordingly, it is

ORDERED that the Plaintiff’s motion for default judgment based on breach of a condition precedent to No-Fault coverage is granted against Defendants 10 OF 10 MEDSUPPLY, CORP, A AND O MEDICAL SUPPLY, INC, A2K NY CORP, ALTERMEDIC PRODUCTS, INC, ATLANTIC MEDICAL AND DIAGNOSTIC, P.C., BETTER MEDICAL HEALTH, P.C., BUSINESS ART, INC, CHI CHINESE ACUPUNCTURE, P.C., DOLEO MED PRODUCTS, INC, DROZ MED SUPPLY, CORP, GLOSS BK, INC, GO FOR MED SUPPLY CORP, HANK ROSS MEDICAL, P.C., LR MEDICAL, PLLC, QUEENS MEDICAL PROFESSIONAL, P.C., RIGHT CHOICE SUPPLY, INC, ROCKAWAY MEDICAL NY, P.C., SANFORD RADIOLOGY, P.C., URGENT PHYSICAL THERAPY, P.C., VITAL CRAFT OS, LLC, and WELLSPRING SOLUTION, LLC; and it is further

ORDERED, ADJUDGED, and DECLARED that Plaintiff GOVERNMENT EMPLOYEES INSURANCE COMPANY owes no duty to provide No-Fault reimbursements to Defendants 10 OF 10 MEDSUPPLY, CORP, A AND O MEDICAL SUPPLY, INC, A2K NY CORP, ALTERMEDIC PRODUCTS, INC, ATLANTIC MEDICAL AND DIAGNOSTIC, P.C., BETTER MEDICAL HEALTH, P.C., BUSINESS ART, INC, CHI CHINESE ACUPUNCTURE, P.C., DOLEO MED PRODUCTS, INC, DROZ MED SUPPLY, CORP, GLOSS BK, INC, GO FOR MED SUPPLY CORP, HANK ROSS MEDICAL, P.C., LR MEDICAL, PLLC, QUEENS

MEDICAL PROFESSIONAL, P.C., RIGHTCHOICE SUPPLY, INC, ROCKAWAY MEDICAL NY, P.C., SANFORD RADIOLOGY, P.C., URGENT PHYSICAL THERAPY, P.C., VITAL CRAFTOS, LLC, and WELLSRING SOLUTION, LLC in connection with the alleged incident on June 13, 2024 (claim number 0547967080101020); and it is further

ORDERED that the Clerk is directed to enter judgment as against Defendants 10 OF 10 MEDSUPPLY, CORP, A AND O MEDICAL SUPPLY, INC, A2K NY CORP, ALTERMEDIC PRODUCTS, INC, ATLANTIC MEDICAL AND DIAGNOSTIC, P.C., BETTER MEDICAL HEALTH, P.C., BUSINESS ART, INC, CHI CHINESE ACUPUNCTURE, P.C., DOLEO MED PRODUCTS, INC, DROZ MED SUPPLY, CORP, GLOSS BK, INC, GO FOR MED SUPPLY CORP, HANK ROSS MEDICAL, P.C., LR MEDICAL, PLLC, QUEENS MEDICAL PROFESSIONAL, P.C., RIGHT CHOICE SUPPLY, INC, ROCKAWAY MEDICAL NY, P.C., SANFORD RADIOLOGY, P.C., URGENT PHYSICAL THERAPY, P.C., VITAL CRAFT OS, LLC, and WELLSRING SOLUTION, LLC; 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 PHARMACY ON GRAND, INC., DS MEDICAL DIAGNOSTIC, P.C., SHAARE TZION IMAGING, LLC, and EAST TREMONT MEDICAL CENTER, as assignee of MICHAEL SERRANT.

This constitutes the Decision and Order of the Court.

10/7/2025 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
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE