

**Country-Wide Ins. Co. v Roberts**

2025 NY Slip Op 35066(U)

December 31, 2025

Supreme Court, New York County

Docket Number: Index No. 657569/2019

Judge: Arlene P. Bluth

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

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COUNTRY-WIDE INSURANCE COMPANY,  
  
Plaintiff,

**INDEX NO.** 657569/2019

**MOTION DATE** N/A, N/A

**MOTION SEQ. NO.** 001 002

- v -

CHISBEON T ROBERTS, NEW YORK CITY HEALTH AND HOSPITALS, METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, EXON MEDICAL EQUIPMENT, INC., CITIMEDICAL I, PLLC, JOURNEY ACUPUNCTURE P.C., SEAPORT CHIROPRACTIC, P.C., AUTOTECH COLLISION SERVICE INC., DYNAMIC SURGERY CENTER LLC, G.B. PHYSICAL THERAPY P.C., HUDSON REGIONAL HOSPITAL, PREMIER ANESTHESIA ASSOCIATES, FARMACIA VIDA

**DECISION + ORDER ON MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45, 46

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

The following e-filed documents, listed by NYSCEF document number (Motion 002) 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72

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

Motion Sequence Numbers 001 and 002 are consolidated for disposition.

Plaintiff's motion (MS001) for a default judgment against defendants CHISBEON T ROBERTS, NEW YORK CITY HEALTH AND HOSPITALS, METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, CITIMEDICAL I, PLLC, JOURNEY ACUPUNCTURE P.C., AUTOTECH COLLISION SERVICE INC., DYNAMIC SURGERY CENTER LLC, G.B. PHYSICAL THERAPY P.C., HUDSON REGIONAL HOSPITAL, PREMIER ANESTHESIA ASSOCIATES, and FARMACIA VIDA is granted.

Defendants' METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, CITIMEDICAL I, PLLC's cross-motion to vacate their default is denied.

Plaintiff's motion (MS002) for summary judgment as against EXON MEDICAL EQUIPMENT, INC. and SEAPORT CHIROPRACTIC, P.C. is denied.

### **Background**

Plaintiff brings this no-fault case arising out of a motor vehicle accident on August 14, 2018 involving defendant Roberts. Mr. Roberts and the remaining defendants filed claims with plaintiff after the accident. Plaintiff argues that defendant Roberts failed to appear for a scheduled Examination Under Oath ("EUO"). It insists that he ignored two notices for EUOs and so it seeks declaratory relief that it need not pay or honor any claims arising out of this accident and specific claim number.

### **MS001**

Plaintiff seeks a default judgment with respect to all non-appearing defendants. It requests that the Court deem service on defendant Roberts as timely as it attempted to serve him at the address in the NF-2, only to learn that he moved out, before finally completing service in June 2020.

Only defendants Metro Pain Specialists Professional Corporation and Citimedical 1, PLLC oppose this sequence number and seek to vacate their defaults. They claim that their delay in filing an answer was not willful and blame the Secretary of State.

In reply, plaintiff contends that there is no affidavit from anyone with personal knowledge and so the Court should reject the excuse proffered by these defendants.

The Court grants the motion and denies the cross-motion. The problem for this Court, as highlighted by plaintiff, is that the opposing defendants do not include anything from someone

with personal knowledge to substantiate their apparent claim that the Secretary of State was to blame for their delay. In other words, these defendants should have included client affidavits to describe when, exactly, they received the summons and complaint from the Secretary of State so that the Court could properly evaluate whether or not their delay was reasonable.

Instead, the opposing defendants include vague affidavits from employees for counsel for these defendants. One affidavit includes an assertion that someone (the exact person is unknown) at the Secretary of State's office confirmed (on some unknown day) that there was a backlog of summons and complaints to serve (NYSCEF Doc. No. 43). A generalized claim about a backlog does not provide the requisite specificity for this Court to conclude that the backlog delayed service in this case. And the other affidavit (NYSCEF Doc. No. 44) similarly contains no specifics about when the firm got the summons and complaint from the client—it only contains a description of standard procedures. Again, the Court is unable to find that there is a reasonable excuse for the delay on this record.

To be clear, this is not a case where an attorney insists there was a miscalendaring—in which case an attorney can make out a reasonable excuse. Rather, these defendants claim the Secretary of State is to blame for a delay in service but don't say how long that delay was and so the Court finds it an inadequate excuse.

## **MS002**

In this motion, plaintiff moves for summary judgment against two appearing defendants on the ground that the eligible injured party, Mr. Roberts, failed to appear for an EUO.

In opposition, defendant Exon Medical Equipment (“Exon”) claims that plaintiff did not inform it of the denial of Exon's claims. It also claims that plaintiff did not cite a reasonable basis for its EUO request or that the second EUO letter was mailed. Defendant Seaport

Chiropractic, P.C. (“Seaport”) makes similar arguments in its opposition and insists that discovery is required.

In reply, plaintiff emphasizes that defendant Roberts failed to appear for the EUOs and that it properly mailed the EUO scheduling letters.

The Court denies this motion as both Seaport and Exon properly pointed out that plaintiff failed to identify the reason why it wanted the EUO. The scheduling letter contends that it wanted to “clarify some of the facts and circumstances surrounding this claim” (NYSCEF Doc. No. 55). And in this motion, plaintiff merely offers the conclusory assertion that “material facts surrounding the accident required clarification” (NYSCEF Doc. No. 48, ¶ 11). That type of boilerplate language does not satisfy plaintiff’s obligation under the relevant insurance regulations.

Plaintiff had an obligation to “provide the injured claimant's assignees with the specific objective justification for its request that the injured claimant submit to an examination under oath (EUO) to establish proof of claim” (*Kemper Indep. Ins. Co. v AB Med. Supply, Inc.*, 187 AD3d 671, 671, 131 NYS3d 556(Mem) [1st Dept 2020] [denying a summary judgment motion as premature]). Similarly, this motion is premature.

## Summary

The Court must acknowledge the elephant in the room: that this decision has been pending for way, way too long. The second-filed motion was fully briefed in early 2021 and then both motions sat, pending for the last four years. Although this matter was only recently assigned to this part, the Court apologizes, on behalf of the court system, for this absurd delay.

The Court is granting MS001—however, the Court declines to award any declaratory relief until the matter is resolved as to all parties.

A conference shall be held on February 24, 2026. By February 17, 2026, the parties shall provide an update concerning discovery, which may include a proposed discovery stipulation. Based on the update, the Court will assess whether an in-person conference is necessary. Given the narrow issues remaining, the Court encourages the remaining parties to work together to complete discovery and move this case toward a resolution. The failure to provide an update by February 17, 2026 may result in an adjournment of that conference, an order to file the note of issue or require an in-person appearance. Please check the docket prior to the conference date.

Accordingly, it is hereby

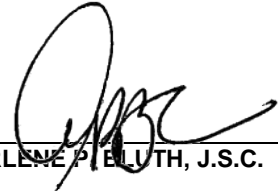
ORDERED that plaintiff's motion (MS001) for a default judgment against defendants CHISBEON T ROBERTS, NEW YORK CITY HEALTH AND HOSPITALS, METRO PAIN SPECIALISTS PROFESSIONAL CORPORATION, CITIMEDICAL I, PLLC, JOURNEY ACUPUNCTURE P.C., AUTOTECH COLLISION SERVICE INC., DYNAMIC SURGERY CENTER LLC, G.B. PHYSICAL THERAPY P.C., HUDSON REGIONAL HOSPITAL, PREMIER ANESTHESIA ASSOCIATES, and FARMACIA VIDA is granted, however, the Court declines to grant any declaratory relief against these parties until the matter is resolved as against the remaining parties (if the matter is settled with the remaining parties, a subsequent motion must be made for such relief); and it is further

ORDERED that plaintiff's motion (MS002) for summary judgment is denied.

12/31/2025

DATE

ARLENE P. BLUTH, J.S.C.



CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: