

**Government Empl. Ins. Co. v BDS Diagnostic Corp.**

2026 NY Slip Op 30126(U)

January 9, 2026

Supreme Court, New York County

Docket Number: Index No. 156935/2024

Judge: David B. Cohen

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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. DAVID B. COHEN PART 58

Justice

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

Plaintiff,

- v -

BDS DIAGNOSTIC CORP., et al.,

Defendants.

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INDEX NO. 156935/2024
MOTION DATE 08/06/2025
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 57, 58, 59, 61

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

In this no-fault declaratory judgment action, plaintiff moves, on default, for a default judgment against several defendant medical providers.

Plaintiff contends that it is entitled to a declaration that it has no obligation to provide no-fault coverage for defendants' claims related to a December 31, 2021 motor vehicle accident involving claimant Louis Linder, on the grounds that Linder failed to appear for duly noticed and scheduled examinations under oath (EUO) and as there is a founded belief that Linder's injuries did not arise from an insured incident.

As to the former ground, plaintiff submits evidence that it received Linder's no-fault claim sometime around April 6, 2022, via a letter sent by Linder's counsel (NYSCEF 49).

Thereafter, Geico sent several EUO scheduling letters:

- (1) one letter, dated April 13, 2022, is captioned as "EUO- 1st Request" and sets the EUO date as April 27, 2022; it was mailed to Linder at an address in Potsdam, New York;

- (2) a second letter is identical to the one above, except it was mailed to Linder at a Bronx, New York address;
- (3) a third letter, dated April 22, 2022, is captioned “EUO – 2<sup>nd</sup> Request” and sets the EUO date as May 11, 2022, and was sent to Linder at the Potsdam address;
- (4) the fourth letter is identical to the third letter but was sent to Linder at the Bronx address; and
- (5) the fifth letter is identical to the third letter but was sent to Linder’s counsel.

(NYSCEF 49).

A transcript dated May 11, 2022 reflects that neither Linder nor his attorney appeared for the EUO (*id.*), and thus more letters were mailed to Linder and his attorney, all dated May 12, 2022, setting the new EUO date as June 1, 2022. On June 1, 2022, neither Linder nor his attorney appeared for the EUO (*id.*).

In the first instance, plaintiff established that the defendants at issue on this motion were properly served and failed to timely appear or answer. Moreover, as a failure to appear for a EUO vitiates any applicable insurance coverage, plaintiff establishes the facts stating its claim for a declaratory judgment (*see State Farm Mut. Auto. Ins. Co. v Equinox Physical Therapy, P.C.*, 231 AD3d 604 [1st Dept 2024] [plaintiff entitled to declaratory relief based on evidence that claimants failed to appear at properly scheduled EUOs, thereby vitiating insurance policy]).

Accordingly, it is hereby

ORDERED that plaintiff’s motion for a default judgment is granted; and it is further

ORDERED, ADJUDGED AND DECLARED that the plaintiff owes no duty to afford, pay or cover any no-fault claims of defendants BDS DIAGNOSTIC CORP., CHI CHINESE ACUPUNCTURE, P.C., COMPASSION MEDICAL CARE, PLLC, COMPLETE ORTHO SUPPLY, INC., EZRX CHEMISTS CORP., FAMILY HEALTH NP, P.C., JOSEPH A. RAIA, M.D., P.C., NEW YORK PHYSICAL THERAPY TOUCH, PLLC a/k/a NEW YORK PT

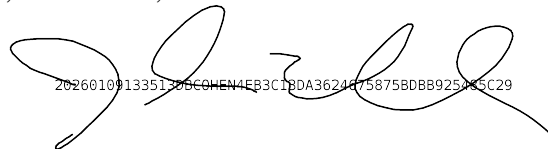
TOUCH, PLLC, PRANEVICIUS MEDICAL, P.C., QUALITY ANESTHESIA SERVICES, LLC, QUALITY HEALTH CARE MANAGEMENT CORP., RIGHT CHOICE SUPPLY, INC., SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, SHERRIE RAWLINS MEDICAL, P.C., SPINAL PAIN & REHAB MEDICAL, P.C., STAR OF N.Y. CHIROPRACTIC DIAGNOSTIC, P.C., THROGS NECK MEDICAL SERVICES, P.C., and WALMED EQUIPMENT, LLC, with respect to the alleged collision that occurred on December 31, 2021, referenced by claim number 8747670690000001; and it is further

ORDERED, ADJUDGED AND DECLARED that all No-Fault lawsuits, arbitrations, awards, judgments, and claims filed by BDS DIAGNOSTIC CORP., CHI CHINESE ACUPUNCTURE, P.C., COMPASSION MEDICAL CARE, PLLC, COMPLETE ORTHO SUPPLY, INC., EZRX CHEMISTS CORP., FAMILY HEALTH NP, P.C., JOSEPH A. RAIA, M.D., P.C., NEW YORK PHYSICAL THERAPY TOUCH, PLLC a/k/a NEW YORK PT TOUCH, PLLC, PRANEVICIUS MEDICAL, P.C., QUALITY ANESTHESIA SERVICES, LLC, QUALITY HEALTH CARE MANAGEMENT CORP., RIGHT CHOICE SUPPLY, INC., SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC, SHERRIE RAWLINS MEDICAL, P.C., SPINAL PAIN & REHAB MEDICAL, P.C., STAR OF N.Y. CHIROPRACTIC DIAGNOSTIC, P.C., THROGS NECK MEDICAL SERVICES, P.C., and WALMED EQUIPMENT, LLC, arising from the December 31, 2021 loss, referenced in the complaint, and referenced by claim number 8747670690000001, are hereby ordered to be dismissed or stayed. This stay shall not be a bar against dismissing any such related actions based on theories of res judicata or collateral estoppel where applicable. This judgment is enforceable for any claims filed against GEICO, and any of its affiliated entities, including

GEICO GENERAL INSURANCE COMPANY, GEICO INDEMNITY COMPANY and GEICO CASUALTY COMPANY, and it is further,

ORDERED that this action is severed and shall proceed against CAPLET PHARMACY, INC., CITIMED COMPLETE MEDICAL CARE, P.C., CITIMED SURGERY CENTER, LLC a/k/a CMSC, LLC, EMUNA, INC. d/b/a NAVAR PHARMACY, FALLA POLYCARPE, N.P., GRACE MEDICAL HEALTH PROVIDER, P.C., IDY LIANG, N.P, HARVEY LEVITAN, M.D., KBJ MEDICAL PRACTICE, P.C., QS MEDICAL SERVICES, P.C., PRISTINE RX CORP., ROCKLAND AND BERGEN SURGERY CENTER, LLC, MICHAEL ZWIRBLIA, PSYD, CHRISTINE SHORTER, N.P., and LOUIS LINDER; and it is further

ORDERED that the remaining parties appear for a preliminary conference on February 17, 2026 at 10:30 a.m., at 71 Thomas Street, Room 305, New York, New York.



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1/9/2026  
DATE

DAVID B. COHEN, J.S.C.

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