

**Unitrin Safeguard Ins. Co. v Zavala**

2026 NY Slip Op 30238(U)

January 16, 2026

Supreme Court, New York County

Docket Number: Index No. 153413/2024

Judge: James d'Auguste

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. James E. d'Auguste PART
Justice

UNITRIN SAFEGUARD INSURANCE COMPANY, Plaintiff,
INDEX NO. 153413/2024
MOTION DATE 06/05/2025
MOTION SEQ. NO. 002

- v -

JAVIER ENRIQUE GUIRACOCHA ZAVALA, MARLON MUZHA CHONILLO, MAURICIO JAMIE POTES, ALEXANDRE B. DE MOURA MD, PC, ALL COUNTY, LLC, AMERICAN MEDICAL INITIATIVES, PC, ANARAFENA MEDICAL, PLLC, ARES MEDICAL SUPPLIES, LLC, AUTO RX, INC, AVENTA MED SUPPLY INC, AXION MED, INC, BORUKHOV RADIOLOGY PLLC, BOWEN MD, PLLC, BROOKLYN CARDIOVASCULAR CARE, PLLC, CAPLET PHARMACY INC, CHIROPRACTIC EXAM WORKS, PC, CLARITY PSYCHIATRY MEDICAL SERVICES, PC, DIAMOND CHIROPRACTIC, PC, ELECTROMEG SUPPLY CORP, EMPIRE STATE RADIOLOGY, PC, EXPRESS RECOVERY INC, FLEXMED SUPPLY INC, FUTURE REHAB PHYSICAL THERAPY, PC, GAETAN JEAN MARIE, DNP-FNP, GLEN OAKS RX, INC, HARVEY LEVITAN MEDICAL, PC, HEALTHLIFT PHARMACY SERVICES, LLC, HERSCHEL KOTKES MD PC, HONGIK ACUPUNCTURE NY, PC, INFINITE SUPPLY GROUP, INC, JUAN D DELACRUZ, LEE E LOEWINGER, LINDEN ORTHOPAEDICS, PC, LONG ISLAND ANESTHESIA PHYSICIANS, LLP, MAX JEAN-GILLES, MEDICAL IMAGING CONSULTANTS, LLP, MEDISOURCE MEDICAL INC, MERCY MEDICAL CENTER, MIDWOOD METROPOLITAN MEDICAL, PC, MJG MOUNT HOLLIS MEDICAL, PC, MULTIWAVE DIAGNOSTIC INC, NEW ARENA PT, PC, NEW YORK MEDICAL MONITORING, PC, NIMBLE SOLUTION INC, OCEAN MEDICAL OFFICE, PC, OPAQUE NY, INC, ORTHO CHOICE INC, ORTHO FLEX MED SUPPLY INC, PHYSIO REHAB PT, PC, PROLOG SUPPLY, INC, RAPID SCRIPTS PHARMACY CORP, RIDGEWOOD DRUG INC, RIGHT CHOICE SUPPLY, INC, ROCKAWAYS ASC DEVELOPMENT, LLC, SCOB, LLC, SEDATION VACATION PERIOPERATIVE MEDICINE PLLC, SONIC RX PHARMACY, INC, SOUTHWEST SUFFOLK MEDICAL, PC, STAR MEDICAL IMAGING, PC, TIMOTHY J HENDERSON, TRIBOROUGH ASC, LLC, TWELVE STEPS CHIROPRACTIC, PC, VIOTEK MED SUPPLIES INC.,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 145, 146, 147, 150, 151, 152, 153, 154, 155, 156, 157, 158

were read on this motion to/for

SUMMARY JUDGMENT

Plaintiff Unitrin Safeguard Insurance Company (“Insurer”), moves, pursuant to CPLR 3212, for summary judgment. Insurer asserts it is not obligated to pay any of the no-fault claims submitted on behalf of claimants Marlon Muzha Chonillo, Javier Enrique Guiracocha Zavala and Mauricio Jamie Potes (“Claimants”) by defendants, the answering medical providers (“Defendants”).

Claimants appeared for duly scheduled EUOs, but Insurer asserts claimants’ testimony raised additional issues as to the legitimacy and medical necessity of the purported medical treatment, contributing to Insurer’s suspicion of a strong possibility that Claimants’ submitted treatments were not causally related to the alleged collision, were exaggerated and/or did not arise from an insured incident. NYSCEF Doc. No. 124. Hence, based on the totality of Insurer’s investigation and Claimants’ EUO testimony, Insurer concluded that any alleged injuries and subsequent no-fault treatment submitted by the Defendants were not causally related to the February 14, 2023, collision, and/or did not arise from an insured event. As such, Insurer denied the bills received on behalf of Claimants on such basis. Further, Insurer argues as all Claimants failed to subscribe and return their EUO transcripts, they failed to meet a condition precedent to coverage. *Id.* Insurer notes that the Defendants’ responses are silent concerning Claimants’ failures to subscribe and return their EUO transcripts, and assert there are no statements or allegations that Claimants executed or returned their EUO transcripts. NYSCEF Doc. No. 158. Insurer’s reply additionally notes that Claimants have

admitted the allegations in the complaint by failing to file an answer. *See State Farm Mut. Auto. Ins. Co. v. Surgicore of Jersey City, LLC*, 2021 N.Y. Slip Op. 03536 (1st Dep't 2021) (citing *Al Fayed v. Barak*, 39 A.D.3d 371 (1st Dep't 2007)).

While Defendants assert the matter is premature as discovery remains outstanding, claiming they need the discovery sought to oppose Insurer's motion as the discovery relates to the issues presented and Defendant cannot receive this information by any other source (NYSCEF Doc. No. 150), the Court finds Defendants have failed to demonstrate that any discovery sought would produce evidence sufficient to defeat the motion specifically on the issue of Claimants' failures to subscribe their EUO transcripts. Additionally, Defendants' sparse opposition fails to raise any triable issues of fact to defeat Insurer's motion for summary judgment.

As the Appellate Division, First Department, has repeatedly held under 11 NYCRR 65-1.1, "a claimant's failure to subscribe and return the EUO transcript breached a condition of coverage and warrants denial of coverage...." *Kemper Independence Ins. Co. v. Cornerstone Chiropractic, P.C.*, 185 A.D.3d 468 (1st Dep't 2020). Therefore, the Court grants Insurer's motion to the extent of declaring a lack of coverage due to claimants' failure to subscribe and return their EUO transcripts, thereby failing to meet a critical and material condition precedent to coverage, and vitiating no-fault coverage. However, this determination is granted except for any claims adjudicated to conclusion by the Defendants, and Insurer shall pay all such claims falling into such category.

The Court has considered Defendants' remaining arguments and finds them unavailing.

Accordingly, it is hereby

ORDERED that plaintiff insurer's motion for summary judgment against the answering medical provider defendants is granted to the extent provided for above.

This constitutes the decision and order of this Court.

1/16/2026

DATE

James d'Auguste, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE