

Hertz Vehs., LLC v 334 Grand Concourse Med., P.C.
2026 NY Slip Op 31173(U)
March 25, 2026
Supreme Court, New York County
Docket Number: Index No. 155060/2024
Judge: Matthew V. Grieco
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: HON. MATTHEW V. GRIECO PART 30M

Justice

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HERTZ VEHICLES, LLC, AND ALL OF ITS AFFILIATES AND SUBSIDIARIES, INCLUDING BUT NOT LIMITED TO THE HERTZ CORPORATION AND HERTZ CO.,

Plaintiff,

- v -

334 GRAND CONCOURSE MEDICAL, P.C., AUTUMN PT, P.C., BEST CARE PHARMACY OF NEW YORK, INC., EASY CARE MEDICAL SERVICES, P.C., JULES FRANCOIS PARISIEN, M.D., LANE MEDICAL CARE, P.C., NYU GROSSMAN SCHOOL OF MEDICINE FACULTY GROUP PRACTICE, NYU LANGONE HOSPITALS A/K/A NYU LANGONE HOSPITAL LONG ISLAND, NYU RADIOLOGY ASSOCIATES, OCEAN BLUE CHIROPRACTIC, P.C., PELHAM PARKWAY MEDICAL, P.C., PORTAL MEDICAL, P.C., QUEENS RADIOLOGY IMAGING, P.C., SUNSHINE VALLEY STREAM MEDICAL, P.C., UNITED CARE PHYSICAL THERAPY, P.C., URBAN CHOICE MEDICAL CARE, P.C., JERIE GROSS, ALEX ROIT CHIROPRACTIC, P.C., CENTURION MIDTOWN ANESTHESIA, PLLC, MEDEX DIAGNOSTIC AND TREATMENT CENTER, LLC, MIRIAM FUCHS, NITIN MARIWALLA M.D. PLLC, NORTH SHORE-LIJ MEDICAL, P.C., NP PHYSICAL THERAPY, P.C., NYU LANGONE HOSPITALS A/K/A NYU FACULTY GROUP PRACTICE, PACEM PSYCHOLOGICAL SERVICES, P.C., WILLIAM L. KING, M.D., P.C.

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 85, 86, 87, 88

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

Upon the foregoing documents, and for the reasons stated infra, plaintiff's motion for a default judgment is granted in part.

On May 31, 2024, plaintiff, Hertz Vehicles, LLC and All of Its Affiliates and Subsidiaries, Including but Not Limited to the Hertz Corporation and Hertz Co.

("Hertz"), commenced this action for a declaratory judgment that it owes no duty to pay any no-fault claims arising out of a motor vehicle collision that allegedly occurred on September 13, 2022, on the ground that claimant defendant Jerie Gross failed to appear for duly and properly requested examinations under oath ("EUOs") on two occasions, which constituted a violation of a condition precedent to coverage by the terms of the policy and under the no-fault regulations (NYSCEF Doc. No. 1 [Summons and Complaint]).

On November 15, 2024, plaintiff moved for a default judgment pursuant to CPLR 3215 against all the served non- and late-answering defendants (NYSCEF Doc. Nos. 28-45). Plaintiff also sought leave to amend the summons and complaint pursuant to CPLR 3025(b) to add several defendants to this action, who, after the filing of the summons and complaint, submitted bills to Hertz seeking no-fault reimbursement for additional medical services allegedly provided to Gross.

In a Decision and Order dated March 19, 2025 (Engoron, J.) (NYSCEF Doc. No. 52), the Court granted plaintiff's motion for a default judgment against all the served non-answering defendants:¹ Lane Medical Care, P.C.; NYU Grossman School of Medicine Faculty Group Practice; NYU Langone Hospitals a/k/a NYU Langone Hospital Long Island; NYU Radiology Associates; Ocean Blue Chiropractic, P.C.; Pelham Parkway Medical, P.C.; Queens Radiology Imaging, P.C.; Sunshine Valley Stream Medical, P.C.; and United Care Physical Therapy, P.C. The Court also granted plaintiff's request to amend the summons and complaint to add the following additional

¹ The Court deemed the late answers of defendants Jerie Gross, Best Care Pharmacy of New York, Inc., and Portal Medical, P.C. timely filed *nunc pro tunc*.

defendants: Alex Roit Chiropractic, P.C.; Centurion Midtown Anesthesia, PLLC; Medex Diagnostic and Treatment Center, LLC (“Medex”); Miriam Fuchs; Nitin Mariwalla M.D. PLLC; North Shore-LIJ Medical, P.C.; NP Physical Therapy, P.C.; NYU Langone Hospitals a/k/a NYU Faculty Group Practice; Pacem Psychological Services, P.C.; and William L. King, M.D., P.C. (“King”).

On March 27, 2025, plaintiff filed the amended summons and verified complaint (NYSCEF Doc. No. 54-55).

On May 15, 2025, defendants Portal Medical, P.C., and King filed an answer to the amended complaint (NYSCEF Doc. No. 65). On May 30, 2025, plaintiff filed a partial rejection of the late answer, stating that it might reconsider its position pending the proffer of a reasonable excuse for the delay and a meritorious defense (NYSCEF Doc. No. 66).

On October 8, 2025, defendant Medex filed an answer with counterclaims (NYSCEF Doc. No. 83). On October 10, 2025, plaintiff filed a rejection of the late answer, stating that it might reconsider its position pending the proffer of a reasonable excuse for the delay and a meritorious defense (NYSCEF Doc. No. 84).

On September 9, 2025, plaintiff moved for a default judgment pursuant to CPLR 3215 against all the served non- and late-answering defendants to the amended summons and verified complaint (NYSCEF Doc. Nos. 67-80): Alex Roit Chiropractic, P.C.; Centurion Midtown Anesthesia, PLLC; Medex; Nitin Mariwalla M.D. PLLC; North Shore-LIJ Medical, P.C.; NP Physical Therapy, P.C.; NYU Langone Hospitals a/k/a NYU Faculty Group Practice; Pacem Psychological Services, P.C.; and King (NYSCEF Doc. Nos. 67-80).

On February 6, 2026, defendant Medex filed an affirmation in opposition to the motion for default, stating that it had not been aware of the lawsuit until it received the dismissal motion motion, due to the Secretary of State's admitted delays in forwarding the complaint (NYSCEF Doc. No. 86). On February 9, 2026, plaintiff filed a stipulation accepting Medex's answer and withdrawing the motion for default judgment as to Medex, only (NYSCEF Doc. 88).

On February 13, 2026, plaintiff filed a stipulation of discontinuance against the following defendants (named in the original summons and verified complaint): 334 Grand Concourse Medical, P.C.; Autumn PT, P.C.; Easy Care Medical Services, P.C.; Jules Francois Parisien, M.D.; and Urban Choice Medical Care, P.C. (NYSCEF Doc. No. 89).

A plaintiff seeking default judgment against a non-appearing defendant must move within one year of the default (*see* CPLR 3215[c]), and file proof of: (1) service of the summons and complaint, or summons with notice; (2) the facts constituting the claim; and (3) the default (*see* CPLR 3215[f]; *Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023]).

To establish the "facts constituting the claim," the movant need only demonstrate "enough facts to enable a court to determine that a viable cause of action exists" (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]), which can be effected by affidavit of a party or by verified complaint, if one has been properly served (*see id.* at 70; CPLR 3215[f]). The "standard of proof is not stringent, amounting only to some firsthand confirmation of the facts" (*Joosten v Gale*, 129 AD2d 531, 535 [1st Dept 1987]).

“The failure of a person eligible for no-fault benefits to appear for a properly noticed EUO constitutes a breach of a condition precedent vitiating coverage” (*Mapfre Ins. Co. of New York v Manoo*, 140 AD3d 468, 470 [1st Dept 2016]).

Here, plaintiff has already established the facts constituting the claim (*see* Decision and Order dated March 19, 2025 [Engoron, J.]) (NYSCEF Doc. No. 52). Plaintiff has further demonstrated that it is entitled to a default judgment against the non-answering defendants by submitting, *inter alia*: the amended summons and verified complaint (NYSCEF Doc. Nos. 54-55); affidavits of service and additional service in compliance with CPLR 3215(g)(4) (NYSCEF Doc. Nos. 67-68, 73, 80); an affirmation of a claims adjuster, employed by a third-party administrator for Hertz, ESIS, Inc., attesting to claims received from or on behalf of claimant Gross, the reasons Hertz requested EUOs for Gross, the timely mailing and scheduling of at least two EUOs for Gross, and Gross’ failure to appear at any EUO (NYSCEF Doc. No. 71); an affirmation of an attorney, attesting to his firm’s business practices in generating and mailing EUO notices, his review of the files, and his personal presence and claimant’s failure to appear at the scheduled EUOs (NYSCEF Doc. No. 70); a police accident report (NYSCEF Doc. No. 74); no-fault claims forms (NYSCEF Doc. No. 75); EUO scheduling letters with affidavits of service (NYSCEF Doc. No. 76); and an affirmation of counsel in support of the motion (NYSCEF Doc. No. 69).

Although the answer of King was filed late (*see* CPLR 3012), and without reasonable excuse for the delay, there is no prejudice, particularly in light of plaintiff’s acceptance of another late answer and its concession that default judgment is unavailable as to one other medical provider defendant; in the interest of justice, the

Court will deem the answer timely filed (*see Morales v American United Transp., Inc.*, 214 AD3d 415 [1st Dept 203]; *New Media Holding Co. LLC v Kagalovsky*, 97 AD3d 463 [1st Dept 2012]).

It is therefore

ORDERED that plaintiff's motion for default judgment is granted as to defendants Alex Roit Chiropractic, P.C.; Centurion Midtown Anesthesia, PLLC; Nitin Mariwalla M.D. PLLC; North Shore-LIJ Medical, P.C.; NP Physical Therapy, P.C.; NYU Langone Hospitals a/k/a NYU Faculty Group Practice; and Pacem Psychological Services, P.C.; and it is further


ORDERD, ADJUDGED, and DECLARED that plaintiff owes no duty to afford, pay, or cover any no-fault claims of defendants Alex Roit Chiropractic, P.C.; Centurion Midtown Anesthesia, PLLC; Nitin Mariwalla M.D. PLLC; North Shore-LIJ Medical, P.C.; NP Physical Therapy, P.C.; NYU Langone Hospitals a/k/a NYU Faculty Group Practice; and Pacem Psychological Services, P.C.; and it is further

ORDERED and ADJUDGED that all no-fault lawsuits, arbitrations, awards, judgments, and claims filed by defendants Alex Roit Chiropractic, P.C.; Centurion Midtown Anesthesia, PLLC; Nitin Mariwalla M.D. PLLC; North Shore-LIJ Medical, P.C.; NP Physical Therapy, P.C.; NYU Langone Hospitals a/k/a NYU Faculty Group Practice; and Pacem Psychological Services, P.C. arising from the September 13, 2022

collision referenced by Hertz claim numbers 1M01M012646567 and 1M01M012596649 are hereby dismissed or permanently stayed; and it is further

ORDERED that the balance of this action is severed and continued.

This constitutes the decision and order of the Court.

<u>3/25/2026</u> DATE		 MATTHEW V. GRIECO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <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