

<b>American Tr. Ins. Co. v Jingcun Liu</b>
2026 NY Slip Op 31601(U)
April 9, 2026
Supreme Court, New York County
Docket Number: Index No. 652619/2025
Judge: Nicholas W. Moyne
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. NICHOLAS W. MOYNE PART 41M**

*Justice*

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

JINGCUN LIU, ARIS DIAGNOSTIC MEDICAL, PLLC, NY-LI  
NEUROMUSCULAR SKELETAL CHIROPRACTIC  
ELECTRODIAGNOSTIC SERVICES P.C., QING ZHANG  
MEDICAL P.C., READY TO MOVE PT P.C., SPINE IN  
MOTION CHIROPRACTIC P.C.

Defendant.

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INDEX NO. 652619/2025

MOTION DATE 02/15/2026

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

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

Upon the foregoing documents, it is

Pursuant to CPLR 3215, plaintiff American Transit Insurance Company moves for a default judgment against defendants Jingcun Liu (Liu), Aris Diagnostic Medical, PLLC, NY-LI Neuromuscular Skeletal Chiropractic Electrodiagnostic Services P.C., Qing Zhang Medical P.C., Ready To Move PT P.C., and Spine In Motion Chiropractic P.C. Defendants have not responded to plaintiff’s motion. For the reasons below, plaintiff’s motion is granted.

**BACKGROUND AND PROCEDURAL HISTORY**

Plaintiff issued an insurance policy to Liu (NY St Cts Elec Filing [NYSCEF] Doc No. 7, plaintiff’s support affirmation ¶ 4). Plaintiff’s insurance policy requires, among other things, that an injured person submits to an independent medical examination (IME) (NYSCEF Doc No. 9, plaintiff’s exhibit B, insurance policy).

On or about June 18, 2023, Liu was injured in an automobile accident (NYSCEF Doc No. 7 ¶¶ 5, 9; NYSCEF Doc No. 8, plaintiff’s exhibit A, affirmations and affidavit of merit ¶¶ 16, 18). On May 28, 2024, Liu’s attorney submitted a motor vehicle no-fault claim to plaintiff (NYSCEF Doc No. 10, plaintiff’s exhibit C, no-fault insurance claim).

On July August 31, 2023, Liu was mailed a letter to their address in Flushing, New York from ExamsWorks stating that their first IME appointment was scheduled for September 25, 2023, with Dr. Magda Fahmy (NYSCEF Doc No. 12, plaintiff’s exhibit E,

IME letters). On September 27, 2023, Liu was mailed another letter from ExamWorks stating that their second IME appointment was scheduled for October 16, 2023, with Dr. Magda Fahmy (*id.*). Liu failed to appear for these IME appointments with Dr. Fahmy (NYSCEF Doc No. 8).

Tracy Simpson, scheduling coordinator and supervisor at ExamWorks, stated that Liu's IME letters were generated with mailing addresses for Liu's address in Flushing, New York and Liu's attorney in New York, New York (*id.*). Mike Ficalora, clerical quality assurance coordinator manager at ExamWorks, confirmed that these letters were mailed to Liu and their attorney (*id.*). Plaintiff denied Liu's no-fault claim (NYSCEF Doc No. 11, plaintiff's exhibit D, denial of claim).

On April 28, 2025, plaintiff commenced this action by filing a summons and complaint (NYSCEF Doc No. 13, plaintiff's exhibit F, pleadings). The complaint seeks declaratory judgment that there is no coverage for no-fault reimbursement because of Liu's failure to attend IMEs (*id.* ¶¶ 32-38). The complaint states that an IME was required as a condition precedent for coverage (*id.*).

Plaintiff filed an affirmation of service that Liu was served with the summons and complaint on July 28, 2025, at their address in Flushing, New York and was left with a co-resident of suitable age and discretion (NYSCEF Doc No. 14, plaintiff's exhibit G, affirmations of service). On June 13, 2025, Aris Diagnostic Medical, PLLC, NY-LI Neuromuscular Skeletal Chiropractic Electrodiagnostic Services P.C., Qing Zhang Medical P.C., and Ready To Move PT P.C. were served with copies of the summons and complaint when they were delivered to the New York Secretary of State's office (*id.*). On July 23, 2025, Spine In Motion Chiropractic P.C. was served with copies of the summons and complaint when they were delivered to the New York Secretary of State's office (*id.*).

To date, defendants have not filed an answer or appeared in this action. On February 15, 2026, plaintiff moved for a default judgment and filed its affidavit of service that defendants were mailed copies of its notice of motion, affirmation in support, exhibits, and request for judicial intervention for its default motion (NYSCEF Doc No. 16, plaintiff's default motion affidavit of service). That same day, plaintiff also filed an affidavit of mailing stating that the summons and complaint was mailed to all defendants or where service is made under Business Corporation Law § 306, pursuant to CPLR 3215(g)(3) and (4) (NYSCEF Doc No. 15, plaintiff's exhibit H, affidavit of mailing).

## **DISCUSSION**

On an application for default under CPLR 3215, a plaintiff must provide proof of service of the summons and complaint, proof of the facts constituting the claim, and the defendant's default in answering or appearing (see CPLR 3215 [f]; *Rosenstein v Permanent Mission of the Republic of Sierra Leone to the United Nations*, 217 AD3d 553, 554 [1st Dept 2023]; *Clarke v Liberty Mut. Fire Ins. Co.*, 150 AD3d 1192, 1194 [2d Dept 2017]). To demonstrate facts constituting a cause of action, a plaintiff must provide sufficient proof for a court to determine if a cause of action is viable (*Woodson v*

*Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). The court may consider the verified complaint if properly served, affidavits of merit, and affirmations submitted by the plaintiff (see CPLR 3215 [f]; *Woodson*, 100 NY2d at 71; *Bigio v Gooding*, 213 AD3d 480, 481 [1st Dept 2023]).

The movant of an unopposed default judgment motion bears the burden of establishing, *inter alia*, that the defendants were properly served with that motion and failed to appear (see CPLR 306; CPLR 3215 [f]; CPLR 2103). Proper service upon a defendant by delivering summons and complaint to a person of suitable age and discretion also requires, *inter alia*, that such service be mailed to the defendant at their last known address (see CPLR 308 [2]). Proper service upon an authorized domestic or foreign corporation may be made by delivering the summons and complaint to an authorized agent appointed to receive service or by delivering the summons and complaint to the Secretary of State (CPLR 311 [a] [1]; Business Corporation Law § 306). Similarly, proper service upon a limited liability company may be made by delivering the summons and complaint to a member or manager of the company or an authorized agent to receive such service, or by delivering the summons and complaint to the Secretary of State (CPLR 311-a; Limited Liability Company Law § 303).

Additionally, CPLR 3215(c) requires that if a plaintiff fails to move for an entry of judgment within one year after a default, the court cannot enter a default judgment but must dismiss the complaint as abandoned, upon its own initiative or motion, unless there is sufficient cause to show why the complaint should not be dismissed. CPLR 3215(c) is mandatory since it requires that courts must dismiss claims when a default judgment is not sought within the one-year statutory timeframe because they will be considered abandoned (see *NYCTL 2017-A Trust v Heirs-at-Law of John Ghiselli*, 215 AD3d 427 [1st Dept 2023]).

Plaintiff's motion is granted. Plaintiff has supplied proofs of service of its summons and complaint upon defendants, the facts within the complaint and affirmations provide proof of a viable claim since Liu did not attend the scheduled IMEs, and defendants have neither appeared nor filed answers. Additionally, plaintiff has supplied proof of service of its motion for default upon defendants, and plaintiff has moved for default within the statutory one-year timeframe.

WHEREFORE, it is hereby:

ORDERED AND ADJUDGED that, pursuant to CPLR 3215, plaintiff American Transit Insurance Company's motion for default judgment against defendants Jingcun Liu, Aris Diagnostic Medical, PLLC, NY-LI Neuromuscular Skeletal Chiropractic Electrodiagnostic Services P.C., Qing Zhang Medical P.C.; Ready To Move PT P.C., and Spine In Motion Chiropractic P.C. is granted; and it is further

ORDERED AND ADJUDGED that Defendant JINGCUN LIU, has breached a policy condition of the American Transit policy and therefore, the defendants JINGCUN LIU, ARIS DIAGNOSTIC MEDICAL, PLLC, NY-LI NEUROMUSCULAR SKELETAL CHIROPRACTIC ELECTRODIAGNOSTIC SERVICES P.C., QING ZHANG MEDICAL

