

Unitrin Safeguard Ins. Co. v Fiammetta

2026 NY Slip Op 31897(U)

April 30, 2026

Supreme Court, New York County

Docket Number: Index No. 159303/2023

Judge: Ashlee Crawford

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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. ASHLEE CRAWFORD PART 38
Justice
INDEX NO. 159303/2023
MOTION DATE 06/22/2025, 09/23/2025
MOTION SEQ. NO. 003 004

UNITRIN SAFEGUARD INSURANCE COMPANY,
Plaintiff,

- v -

EUGENIA FIAMMETTA, JAHSLAH WILLIAMS, PHILLIP HUNTER, AMERICAN MEDICAL INITIATIVES, PC, ASM DIAGNOSTIC, INC, ATLAS REHABILITATION MEDICINE, PLLC, AVENUE MEDICAL CARE, PC, BALDWIN MEDICAL SERVICES PC, COMPLETE ORTHO SUPPLY, INC, CONCIERGE DIAGNOSTICS, INC, EASY CARE, PT, PC, ESTER CHAIM MEDICAL, PC, FOUR SQUARE PHYSICAL THERAPY, PC, H. LEVITAN MEDICAL, PC, INSPIRE FAMILY HEALTH NP, PC, INTEGRATED MEDICAL REHABILITATION & DIAGNOSTICS, PC, INTEGRATIVE PSYCHOLOGICAL PROFESSIONAL, KBJ MEDICAL PRACTICE, PC, KUMAN MEDICAL SUPPLY INC, MARC RYBSTEIN, MASE PHARMACY, INC, NATURALIFE CHIROPRACTIC, PC, NYC DISCOUNT PHARMACY, INC, PRIMAVERA PHYSICAL THERAPY, PC, RIGHT MOTION PT, PC, SERGEY KALITENKO, SKY RADIOLOGY, PC, SOVERA MEDICAL SUPPLY, CORP, SUSAN J. BILY-LINDNER, PSYD, PLLC

Defendants.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 84, 85, 86, 87, 88, 89, 90, 91

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

The following e-filed documents, listed by NYSCEF document number (Motion 004) 98, 99, 100, 101, 102, 103, 104, 105

were read on this motion to/for RENEW/REARGUE/RESETTLE/RECONSIDER

Upon the foregoing documents, it is

By prior order dated May 23, 2025, the Court, in relevant part, denied without prejudice plaintiff's motion for default judgment against non-appearing individual defendants Eugenia Fiammetta, Jahslah Williams, and Phillip Hunter (together, "Claimants"), due to the lack of proof of additional service of the summons. The Court further denied default judgment and

dismissed the action against non-appearing medical provider defendants ASM Diagnostic, Inc.; Atlas Rehabilitation Medicine, PLLC; Avenue Medical Care, PC; Baldwin Medical Services PC; Complete Ortho Supply, Inc; Concierge Diagnostics, Inc.; Four Square Physical Therapy, PC; H. Levitan Medical, PC; Integrated Medical Rehabilitation & Diagnostics, PC; Mase Pharmacy; and, Sergey Kalitenko, M.D. (“medical provider defendants”) for plaintiff’s failure to move for default within one year (NYSCEF Doc. 83, Mot. Seq. 002).

Plaintiff now moves unopposed pursuant to CPLR 2221(d) to reargue its default judgment motion against Claimants, and, upon reargument, for default judgment against Claimants (Mot. Seq. 003); and pursuant to CPLR 2221(e) to renew its default judgment motion against medical provider defendants, and, upon renewal, for default judgment against medical provider defendants (Mot. Seq. 004).

BACKGROUND

This action arises out of claims for no-fault insurance benefits made in connection with an automobile insured by plaintiff. Plaintiff alleges that Claimants submitted applications for motor vehicle no-fault benefits (“NF-2s”) arising from injuries they sustained during an automobile incident on March 2, 2022, wherein Fiammetta was driving the insured vehicle with Hunter and Williams were passengers.

Plaintiff now seeks default judgment against defaulting defendants declaring that defendants are not entitled to no-fault insurance benefits because of plaintiff’s founded belief that the alleged injury does not arise out of an insured incident and breach of a condition precedent to coverage has occurred.

DISCUSSION

Leave to Reargue (Mot. Seq. 003)

A motion for leave to reargue pursuant to CPLR § 2221(d) “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion.”

Plaintiff correctly argues that the denial of its motion for default judgment was erroneously premised on a statute requiring additional service of the summons in actions “based upon nonpayment of a contractual obligation” (see CPLR 3215 [g][3][i])¹, whereas this action is for declaratory judgment on no-fault claims. As such, plaintiff is granted leave to reargue.

Leave to Renew (Mot. Seq. 004)

A motion for leave to renew shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination; and shall contain reasonable justification for the failure to present such facts on the prior motion (CPLR § 2221[e]; Alekna v 207-217 West 110 Portfolio Owner LLC, 212 AD3d 480 [1st Dept 2023]; Oparaji v Malcolm Construction LLC, 77 Misc3d 141[A], *1 [App Term, 1st Dept, 2023]).

Plaintiff asserts that sufficient cause exists where plaintiff never intended to abandon the action and their delay in filing a motion for default judgment against the medical provider defendants was due to calculating the time to move for default from the time plaintiff served Claimants instead of from one year of service upon the medical provider defendants. The Court finds that plaintiff has provided a reasonable excuse for its delay in timely moving for default

¹ Although the Court’s May 23, 2025 order refers to CPLR 3215(g)(4)(i) and plaintiff refers to the same provision in its motion papers, the correct provision is CPLR 3215(g)(3)(i), which applies to natural persons.

and demonstrated that its claims are potentially meritorious (see U.S. Bank N.A. v Nunez, 190 AD3d 660, 661 [1st Dept 2021]), and plaintiff is therefore granted leave to renew.

Default Judgment

A party seeking a default judgment must submit proof of service of the summons and the complaint and “proof of the facts constituting the claim, the default and the amount due” (Bigio v Gooding, 213 AD3d 480, 481 [1st Dept 2023][internal citation omitted]). “To demonstrate facts constituting the claim, the movant need only proffer proof sufficient to enable a court to determine that a viable cause of action exists” (id. [internal citation omitted]). “By defaulting, a defendant admits all traversable allegations contained in the complaint, and thus concedes liability, although not damages” (HF Mgt. Servs., LLC v Dependable Care, LLC, 198 AD3d 457, 458 [1st Dept 2021]; Suffolk P.E.T. Management, LLC v Anand, 136 AD3d 417, 417 [1st Dept 2016]).

I. Second and Third Claims: Breach of Condition Precedent to Coverage

Plaintiff contends that it made timely, reasonable requests for examinations under oath (“EUO”) after receiving bills for services allegedly rendered to Claimants and each Claimant twice failed to appear for a duly-scheduled EUO in breach of a condition precedent to coverage under the no-fault policy.

“An insurer must request any additional verification [] to establish proof of claim within 15 business days after receiving the prescribed verification forms it forwarded to the parties required to complete them” (Hereford Ins. Co. v 21 Century Chiropractic Care, 242 AD3d 660, 661 [1st Dept 2025][internal citation omitted]; 11 NYCRR 65-3.5[a], [b]). However, “[t]he notification requirements for verification requests under 11 NYCRR 65-3.5 and 65-3.6 do not

apply to EUOs that are scheduled prior to the insurance company's receipt of a claim form” (Mapfre Ins. Co. of New York v Manoo, 140 AD3d 468, 469 [1st Dept 2016]).

An insurer must also provide a “specific objective justification” for requesting the EUOs (see County-Wide Ins. Co. v Delacruz, 205 AD3d 473 [1st Dept 2022]; see also Kemper Independence Ins. Co. v AB Med. Supply, Inc., 187 AD3d 671 [1st Dept 2020], citing 11 NYCRR 65-3.5[e]).

Failure to appear for a properly-noticed EUO on two separate occasions is a breach of a condition precedent to coverage under a no-fault policy, and voids coverage regardless of the timeliness of the denial (Unitrin Advantage Ins. Co. v Dowd, 194 AD3d 507, 508 [1st Dept 2021]; PV Holding Corp. v Quality Health Supply Corp., 189 AD3d 645, 646 [1st Dept 2020]; Hertz Vehicles, LLC v Alluri, 171 AD3d 432 [1st Dept 2019].; Allstate Ins. Co. v Pierre, 123 AD3d 618 [1st Dept 2014]).

Plaintiff provided a “specific objective justification” for requesting the EUOs (see Whiting Aff. [NYSCEF Doc. 85] ¶¶ 24-28). Plaintiff also sufficiently established that Fiammetta failed to appear for EUOs scheduled for May 11, 2022 and June 1, 2022; and both Williams and Hunter failed to appear for EUOs scheduled for June 1, 2022 and June 22, 2022. The first set of EUO notices to Claimants were timely sent within 15 days of receipt of the respective provider’s bill and that the second set of scheduling letters were sent within 10 days after the first non-appearance (see Hertz Vehicles LLC v Significant Care, PT, P.C., 157 AD3d 600, 601 [1st Dept 2018]; 11 NYCRR 65–3.5[b]; 11 NYCRR 65–3.6[b]).

Plaintiff received a bill from defendant Concierge Diagnostics Inc. on April 27, 2022, for services allegedly rendered to Fiammetta (see Health Insurance Claim Form at 1 [NYSCEF Doc. 77]; Whiting Aff. [NYSCEF Doc. 85] ¶¶ 25-32). On April 28, 2022, plaintiff sent its first EUO

notice to Fiammetta, and upon Fiammetta's non-appearance, a second notice was sent on May 19, 2022 (see EUO Notices to Fiammetta [NYSCEF Doc. 77 at 2-8]).

Plaintiff received a bill from defendant Sovera Medical Supply Corp. on April 14, 2022, for services allegedly rendered to Williams (see Williams NF-3 Form [NYSCEF Doc. 79 at 1-3]; Whiting Aff. [NYSCEF Doc. 85] ¶¶ 33-37). On April 28, 2022, plaintiff sent its first EUO notice to Williams, and at the request of William's counsel, the EUO was rescheduled to June 1, 2022. When Williams failed to appear on June 1st, plaintiff sent another notice on June 8, 2022 (see Williams EUO Notices [NYSCEF Doc. 79 at 4-13]).

Plaintiff received a bill from defendant Sovera Medical Supply Corp. on April 14, 2022, for services allegedly rendered to Hunter (see Hunter NF-3 Form [NYSCEF Doc. 80]; Whiting Aff. [NYSCEF Doc. 85] ¶¶ 38-42). On April 28, 2022, plaintiff sent its first EUO notice to Hunter, and at the request of Hunter's counsel, the EUO was rescheduled to June 1, 2022. When Hunter failed to appear on June 1st, plaintiff sent another notice on June 8, 2022 (see Hunter EUO Notices [NYSCEF Doc. 80 at 4-13]). All Claimants failed to appear at their last noticed EUO.

The Court finds that plaintiff has met its burden of proof for default judgment on its second and third causes of action for breach of a condition precedent to coverage.

II. First Claim: Founded Belief

An insurer may demonstrate that it has no duty to pay claims in connection with an alleged accident based on a "founded belief that the alleged injury does not arise out of an insured incident" (Central Gen. Hosp. v Chubb Group of Ins. Companies, 90 NY2d 195, 199 [1997]; see State Farm Mut. Auto. Ins. Co. v AK Glob. Supply Corp., 203 AD3d 556, 557-558 [1st Dept 2022]).

Plaintiff has met its prima facie burden on its first cause of action. In addition to Claimant's failure to appear at duly-noticed EUOs, plaintiff's no-fault claim representative, Denise Winant, states that no police report was filed for the alleged loss, and that plaintiff received multiple motor vehicle accidents for the alleged loss that were undated and unsigned and did not state whether claimants received or requested medical attention at the scene. She further states that claimants later reported having sustained significant bodily injuries in their NF-2s and that medical provider defendants have submitted tens of thousands of dollars in no fault claims (Winant Aff [NYSCEF Doc. 74] ¶¶ 15-23).

The Court finds that plaintiff is entitled to default judgment against all Claimants and defaulting medical providers except defendant Integrated Medical Rehabilitation & Diagnostics, PC. There is no proof on the record that said defendant was served with additional mailing in compliance with CPLR 3215 (g)(4) (see Aff. of Service of Add. Mailing [NYSCEF Doc. 103]).

Accordingly it is hereby

ORDERED that the motion by plaintiff Unitrin Safeguard Insurance Company ("Unitrin") to reargue is GRANTED and, upon reargument, default judgment is GRANTED as against defendants Eugenia Fiammetta, Jahsiah Williams, and Phillip Hunter (Mot. Seq. 003); and it is further

ORDERED that plaintiff Unitrin's motion to renew is GRANTED and, upon renewal, default judgment is GRANTED only against defendants ASM Diagnostic, Inc.; Atlas Rehabilitation Medicine, PLLC; Avenue Medical Care, PC; Baldwin Medical Services PC; Complete Ortho Supply, Inc; Concierge Diagnostics, Inc.; Four Square Physical Therapy, PC; H. Levitan Medical, PC; Mase Pharmacy; and, Sergey Kalitenko, M.D., and is DENIED as against defendant Integrated Medical Rehabilitation & Diagnostics, PC without prejudice upon

submission of proof of additional service; and any subsequent motion for default judgment shall be filed within 45 days of entry of this order (Mot. Seq. 004); and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of plaintiff Unitrin Safeguard Insurance Company and against the defaulting defendants, Eugenia Fiammetta; Jahsiah Williams; Phillip Hunter; ASM Diagnostic, Inc.; Atlas Rehabilitation Medicine, PLLC; Avenue Medical Care, PC; Baldwin Medical Services PC; Complete Ortho Supply, Inc; Concierge Diagnostics, Inc.; Four Square Physical Therapy, PC; H. Levitan Medical, PC; Mase Pharmacy; and, Sergey Kalitenko, M.D.; and it is further

ORDERED, ADJUDGED, and DECLARED that defendants Eugenia Fiammetta, Jahsiah Williams, and Phillip Hunter each breached a condition precedent to coverage under the no-fault regulation and the policy by failing to appear for duly-scheduled examinations under oath on at least two occasions; and it is further

ORDERED, ADJUDGED, and DECLARED that the injuries allegedly sustained by Eugenia Fiammetta, Jahsiah Williams, and Phillip Hunter, and any subsequent no-fault treatment, were not causally related to the March 2, 2022, collision (Unitrin claim number 22123565052) and/or did not arise from an insured event; and it is further

ORDERED, ADJUDGED, and DECLARED that by reason of no coverage, Unitrin is not required to pay any sums, monies, damages, awards and/or benefits to Eugenia Fiammetta; Jahsiah Williams; Phillip Hunter; ASM Diagnostic, Inc.; Atlas Rehabilitation Medicine, PLLC; Avenue Medical Care, PC; Baldwin Medical Services PC; Complete Ortho Supply, Inc; Concierge Diagnostics, Inc.; Four Square Physical Therapy, PC; H. Levitan Medical, PC; Mase Pharmacy; and, Sergey Kalitenko, M.D., including but not limited to mandatory personal injury protection (no-fault), additional personal injury protection, uninsured/underinsured motorist

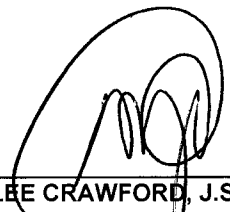
coverage, and supplemental uninsured/underinsured motorist coverage, in connection with the alleged incident of March 2, 2022, under Unitrin claim number 22123565052; and it is further

ORDERED that plaintiff shall, within 20 days of entry of this order, serve a copy of this order with notice of entry on all parties; and it is further

ORDERED that all remaining parties shall appear for a preliminary conference on July 15, 2026, at 10:00 AM.

This constitutes the decision and order of the Court.

4/30/26
DATE


ASHLEE CRAWFORD, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
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