

**American Tr. Ins. Co. v Rojas-Rodriguez**

2020 NY Slip Op 33285(U)

September 24, 2020

Supreme Court, New York County

Docket Number: 161757/2018

Judge: Laurence L. Love

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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. LAURENCE L. LOVE PART IAS MOTION 63M**

*Justice*

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

JHONNY ROJAS-RODRIGUEZ, AAA PHARMACY, INC., ACA PT & REHAB, P.C., ALL BOROUGH CHIROPRACTIC, P.C., ALLAY MEDICAL SERVICES, P.C., BRONX SC, LLC, JEFFREY COHEN, M.D. & MARK KRAMER, M.D., P.C., COMPLETE SPINAL PHYSICAL THERAPY AND CHIROPRACTIC PLLC, EA CHIROPRACTIC DIAGNOSTICS P.C., FAAN MEDICAL SERVICES, P.C., GOLDEN ACUPUNCTURE CARE P.C., JB CHIROPRACTIC SERVICES P.C., DR. JODI JACOBS DC D.B.A JODI EDWARDS DC, LENOX HILL RADIOLOGY AND MEDICAL IMAGING ASSOCIATES, P.C., NY MEDICAL ARTS, P.C., ROCKVILLE ANESTHESIA GROUP, LLP, THIRD AVE CHIROPRACTIC CARE, P.C., VITAL POINTS ACUPUNCTURE P.C., W JOSEPH GORUM MD P.C., YIN YANG NY ACUPUNCTURE, P.C.

Defendants.

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**INDEX NO. 161757/2018**  
**MOTION DATE 9/18/2020**  
**MOTION SEQ. NO. 001**

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

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

Upon the foregoing documents, the motion is decided as follows:

The following read on plaintiff's motion for declaratory judgment, CPLR 3215, in relation to JHONNY ROJAS-RODRIGUEZ'S ("Jhonny") motor vehicle accident on March 12, 2016.

The insured, PEREZ LIVERY SERVICE CORP was involved in a motor vehicle accident where Rojas-Rodriguez was the driver of the insured vehicle. Rojas-Rodriguez made a claim to plaintiff as a purported injured person under New York Policy of Insurance numbered CAP 615252 and given claim # 787606-05.

As a result of foresaid accident, Rojas-Rodriguez sought no-fault benefits from defendants. Defendants have submitted claims to plaintiff with an assignment of benefits from Rojas-Rodriguez and alleging they have rendered services that are compensable under the terms of the policy.

Pursuant to the no-fault endorsement, American Transit requested that Rojas-Rodriguez appear for an Independent Medical Examination. Claimant failed to attend an IME on May 17, 2016 and May 31, 2016, despite “numerous attempts at scheduling an Independent Medical Examination.”

Plaintiff American Transit denied all coverage to the defendants due to the assignor’s failure to attend duly scheduled IME’s.

A summons and complaint were filed on December 17, 2018, seeking a determination that there is no coverage to those that seek no-fault reimbursement from plaintiff, as assignee of Rojas-Rodriguez (see NYSCEF Doc. No. 1), along with affidavits of service upon the defendants (see NYSCEF Doc. No. 2). Plaintiff’s moved for a default judgment on May 22, 2020 and submitted an affidavit of service regarding the notice of motion and affirmation in support (see NYSCEF Doc. No. 16).

The following defendants having failed to appear in this action: AAA PHARMACY, INC, ACA PT & REHAB PC, ALL BOROUGH CHIROPRACTIC PC, ALLAY MEDICAL SERVICES PC, BRONX SC LLC, JEFFREY COHEN MD & MARK KRAMER MD PC, COMPLETE SPINAL PHYSICAL THERAPY AND CHIROPRACTIC PLLC, EA CHIROPRACTIC DIAGNOSTIC PC, FAAN MEDICAL SERVICES PC, GOLDEN ACUPUNCTURE CARE PC, JB CHIROPRACTIC SERVICES PC, DR JODI JACOBS DC, LENOX HILL RADIOLOGY AND MEDICAL IMAGING ASSOICATES P (sic), NY

MEDICAL ARTS PC, ROCKVILLE ANESTHESIS GROUP LP, THIRD AVE CHIROPRACTIC CARE PC, VITAL POINTS ACUPUNCTURE PC, W JOSEPH GORUM MD PC, and YIN YANG NY ACUPUNCTURE PC.

Now, on motion of plaintiff, it is ORDERED, ADJUDGED, and DECLARED, that the defendants, AAA PHARMACY, INC, ACA PT & REHAB PC, ALL BOROUGH CHIROPRACTIC PC, ALLAY MEDICAL SERVICES PC, BRONX SC LLC, JEFFREY COHEN MD & MARK KRAMER MD PC, COMPLETE SPINAL PHYSICAL THERAPY AND CHIROPRACTIC PLLC, EA CHIROPRACTIC DIAGNOSTIC PC, FAAN MEDICAL SERVICES PC, GOLDEN ACUPUNCTURE CARE PC, JB CHIROPRACTIC SERVICES PC, DR JODI JACOBS DC, LENOX HILL RADIOLOGY AND MEDICAL IMAGING ASSOICATES P (sic), NY MEDICAL ARTS PC, ROCKVILLE ANESTHESIS GROUP LP, THIRD AVE CHIROPRACTIC CARE PC, VITAL POINTS ACUPUNCTURE PC, W JOSEPH GORUM MD PC, and YIN YANG NY ACUPUNCTURE PC are not entitled to no-fault benefits as a result of a motor vehicle accident involving JHONNY ROJAS-RODRIGUEZ with policy number CAP 615252 and claim # 787606-05.

ORDERED that the branch of plaintiff's motion that seeks a declaratory judgment with respect to the subject matter of this cause of action is GRANTED against AAA PHARMACY, INC, ACA PT & REHAB PC, ALL BOROUGH CHIROPRACTIC PC, ALLAY MEDICAL SERVICES PC, BRONX SC LLC, JEFFREY COHEN MD & MARK KRAMER MD PC, COMPLETE SPINAL PHYSICAL THERAPY AND CHIROPRACTIC PLLC, EA CHIROPRACTIC DIAGNOSTIC PC, FAAN MEDICAL SERVICES PC, GOLDEN ACUPUNCTURE CARE PC, JB CHIROPRACTIC SERVICES PC, DR JODI JACOBS DC, LENOX HILL RADIOLOGY AND MEDICAL IMAGING ASSOICATES P (sic), NY

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CHIROPRACTIC CARE PC, VITAL POINTS ACUPUNCTURE PC, W JOSEPH GORUM MD  
PC, and YIN YANG NY ACUPUNCTURE PC.

9/24/2020

DATE



LAURENCE L. LOVE, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

DENIED

APPLICATION:

SETTLE ORDER

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

SUBMIT ORDER

FIDUCIARY APPOINTMENT

REFERENCE