

Delos Ins. Co. v Sun Med. Care of Nassaw, P.C.

2011 NY Slip Op 32693(U)

June 2, 2011

Supreme Court, New York County

Docket Number: 100750/2010

Judge: Lucy Billings

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SCANNED ON 10/19/2011
[* 1]
SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: LUCY BILLINGS
J.S.C.
Justice

PART 4C

Index Number : 100750/2010
DELOS INSURANCE CO
VS.
SUN MEDICAL CARE OF NASSAU PC
SEQUENCE NUMBER : 001
DEFAULT JUDGMENT

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

PAPERS NUMBERED

1-2

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that ~~this motion~~ and adjudged that:

The court grants plaintiff's motion for a declaratory judgment on default against all defendants except Jamaica Hospital Medical Center, without opposition, pursuant to the accompanying decision. C.P.L.R. §§ 3001, 3215. The Clerk shall enter that judgment forthwith.

UNFILED JUDGMENT

This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 6/2/11

Lucy Billings
LUCY BILLINGS J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46

-----x

DELOS INSURANCE COMPANY,

Plaintiff

Index No. 100750/2010

- against -

DECISION AND ORDER

SUN MEDICAL CARE OF NASSAW, P.C. a/k/a
SUN MEDICAL CARE OF NASSAU, P.C.,
MULTIPLE PHYSICAL THERAPY, P.C.,
FLATLANDS MEDICAL, P.C., FLUSHING
TRADITIONAL ACUPUNCTURE, P.C.,
CANARSIE CHIROPRACTIC, P.C., VALLEY
STREAM RADIOLOGY, P.C., ETERNITY
CHIROPRACTIC, P.C., ELMONT ACUPUNCTURE
P.C., NATIONAL MEDICAL & SURGICAL
SUPPLY, INC., BRAND MEDICAL SUPPLY,
INC., RELIABLE PHYSICAL THERAPY, P.C.,
ABSOLUTE APPROACH MEDICAL, P.C.,
JAMAICA HOSP ER DEPT a/k/a JAMAICA
HOSPITAL MED CTR, NOVACARE MEDICAL,
P.C., YIN YANG HARMONY ACUPUNCTURE,
P.C., MIYAN FOREMAN, JONATHAN
LATVILLERIE a/k/a JONATHAN
LATHUILLERIE, MATTHEW BRYAN, SHAWNA
LAMPART, MELISSA JINAUT, AFHAN FEWS
a/k/a HAFANI FEWS, CHERRI LEE, and
PURCHASKY ROSIER,

Defendants

UNFILED JUDGMENT

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LUCY BILLINGS, J.S.C.:

Plaintiff seeks a judgment declaring that plaintiff owes no duty to compensate defendants pursuant to New York Insurance Law § 5103 for expenses incurred from a collision June 1, 2009, in Queens County, between two motor vehicles. One of them, although owned by a nonparty, was insured by plaintiff and occupied by defendants Foreman, Latvillerie, Bryan, Lampart, Jinaut, Fewes, Lee, and Rosier. Plaintiff has moved for a default judgment

against all defendants except defendant Jamaica Hospital Medical Center. C.P.L.R. § 3215(e). On April 8, 2011, plaintiff withdrew its motion against defendant Lee. Although plaintiff served the summons and complaint on the corporate defendants February 5, 2010, and mailed them the required second copies, C.P.L.R. § 3215(g)(4), and served the summons and complaint on defendants Foreman and Latvillerie February 6, 2010, defendants Lampart and Fewes February 16, 2010, and defendants Bryan, Jinaut, and Rosier April 24, 2010, these defendants failed to answer.

Plaintiff's witness attests that the corporate defendants submitted claims for medical diagnostic and treatment expenses due to the June 2009 collision, as assignees of the individual defendants' benefits under plaintiff's insurance policy. See Fair Price Med. Supply Corp. v. Travelers Indem. Co., 10 N.Y.3d 556, 563 (2008); Hospital for Joint Diseases v. Travelers Prop. Cas. Ins. Co., 9 N.Y.3d 312, 317 (2007). As assignees, these defendants may claim benefits only to the extent that the assignor individual defendants are entitled to benefits. Matter of International Ribbon Mills, 36 N.Y.2d 121, 126 (1975); Madison Liquidity Invs. 119, LLC v. Griffith, 57 A.D.3d 438, 440 (1st Dep't 2008); Condren, Walker & Co., Inc. v. Portnoy, 48 A.D.3d 331 (1st Dep't 2008); Trisingh Enters. v. Kessler, 249 A.D.2d 45, 46 (1st Dep't 1998).

Plaintiff's witness also attests that plaintiff notified the individual defendants of requested examinations under oath, substantiated by the notices themselves, and that the individual

defendants did not appear for the examinations. These defendants' noncooperation constitutes a failure of a condition precedent to insurance benefits for the motor vehicle collision to any parties potentially entitled to benefits under Insurance Law § 5103 or their assignees. 11 N.Y.C.R.R. § 65-1.1(a). See N.Y. Ins. Law § 5103(d) and (h);; Unitrin Advantage Ins. Co. v. Bayshore Physical Therapy, PLLC, 82 A.D.3d 559, 560 (1st Dep't 2011); Stephen Fogel Psychological, P.C. v. Progressive Cas. Ins. Co., 35 A.D.3d 720, 721 (2d Dep't 2006).

Consequently, the court grants plaintiff's motion for a default judgment against defendants Sun Medical Care of Nassaw, P.C. a/k/a Sun Medical Care of Nassau, P.C., Multiple Physical Therapy, P.C., Flatlands Medical, P.C., Flushing Traditional Acupuncture, P.C., Canarsie Chiropractic, P.C., Valley Stream Radiology, P.C., Eternity Chiropractic, P.C., Elmont Acupuncture P.C., National Medical & Surgical Supply, Inc., Brand Medical Supply, Inc., Reliable Physical Therapy, P.C., Absolute Approach Medical, P.C., Novacare Medical, P.C., Yin Yang Harmony Acupuncture, P.C., Foreman, Latvillerie, Bryan, Lampart, Jinaut, Fewes, and Rosier. C.P.L.R. § 3215; American Tr. Ins. Co. v. Wilfred, 296 A.D.2d 360, 361 (1st Dep't 2002); Utica First Ins. Co. v. Santaqata, 66 A.D.3d 876, 878 (2d Dep't 2009); Lancer Ins. Co. v. Whitfield, 61 A.D.3d 724, 725 (2d Dep't 2009); Travelers Indem. Co. of Am. v. Pullini Water Servs., Inc., 35 A.D.3d 846, 847 (2d Dep't 2006). The court adjudges and declares that plaintiff is not obligated to compensate these defendants for

expenses related to the collision June 1, 2009. C.P.L.R. § 3001; American Tr. Ins. Co. v. Wilfred, 296 A.D.2d at 361-62; Travelers Indem. Co. of Am. v. Pullini Water Servs., Inc., 35 A.D.3d at 846-47. See Unitrin Advantage Ins. Co. v. Bayshore Physical Therapy, PLLC, 82 A.D.3d at 560. This decision constitutes the court's order and judgment.

DATED: June 2, 2011

Lucy Billings

LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C.

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