

Progressive Preferred Ins. Co. v Laine

2011 NY Slip Op 32798(U)

October 21, 2011

Supreme Court, Nassau County

Docket Number: 6057/09

Judge: Anthony L. Parga

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SHORT FORM ORDER

SUPREME COURT - NEW YORK STATE - NASSAU COUNTY

PRESENT: HON. ANTHONY L. PARGA
JUSTICE

-----X PART 8

PROGRESSIVE PREFERRED INSURANCE
COMPANY,

Plaintiff,

-against-

INDEX NO. 6057/09
XXX

MOTION DATE: 09/02/11
SEQUENCE NO. 003

MARIE LAINE a/k/a MARIE L. LAINE, et. al.,

Individual Defendants,

-and-

ALL BORO PSYCHOLOGICAL SERVICES, P.C., et. al.,

Provider Defendants.

-----X

Notice of Motion, Affs. & Exs.....	<u>1</u>
Affidavit in Opposition.....	<u>2</u>
Reply Affirmation.....	<u>3</u>

Upon the foregoing papers, it is ordered that the motion by plaintiff, PROGRESSIVE INSURANCE COMPANY, for summary judgment against the answering defendants, All Boro Psychological Services, P.C., Bright Medical Supply Corp., New York Diagnostic Medical Care, P.C., BNN Chiropractic, Great Healthpoint Acupuncture, P.C., Nguyen Chiropractic, P.C., Spectrum 205 Medical, P.C., Total Body Chiropractic, P.C., Triumph Medical, P.C., VRS Medical, PLLC, Hollis Medical Care, P.C., Huo Acupuncture, P.C., and Quality Psychological Services, P.C., pursuant to CPLR §3212, is granted.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

The plaintiff commenced this action seeking declaratory relief with respect to losses of September 1, 2008, September 18, 2008, October 7, 2008, October 12, 2008, and October 15, 2008, under a policy issued to defendant Marie Laine a/k/a Marie L. Laine bearing policy number

20963291-0, and to the loss of October 25, 2008 under a policy issued to defendant Jean LaMartine Laine a/k/a Jean L. Laine bearing policy number 460034880.

Plaintiff submits that the motor vehicle accidents resulting in the losses of September 1, 2008, September 18, 2008, October 7, 2008, October 12, 2008, October 15, 2008, and October 25, 2008 were staged. Plaintiff maintains that the losses of September 1, 2008, September 18, 2008, October 7, 2008, October 12, 2008, October 15, 2008, and October 25, 2008 were “intentionally caused,” and as such, the plaintiff has no duty to provide liability coverage, defend or indemnify, or provide coverage for no-fault or uninsured motorist benefits as a result of these losses. In support of its arguments, plaintiff submits an affidavit of Senior Medical Claims Representative, Gary Lamay, as well as the EUO transcripts of several of the defendants. With respect to All Boro Psychological Services, P.C. (hereinafter “All Boro”), plaintiff also argues that it has previously been granted summary judgment as against defendant All Boro in a related declaratory judgment action entitled, *Progressive Preferred Insurance Company v. Marie Jean Et. Al.*, under Nassau County Index number 19437/08. In said action, which was also based upon intentional losses, both plaintiff and defendant All Boro were parties and Justice Iannacci granted summary judgment to plaintiff by order entered March 16, 2011. As such, plaintiff contends that defendant All Boro is subject to issue preclusion regarding plaintiff’s entitlement to summary judgment declaring that Progressive is not obligated to provide insurance coverage for these intentional acts.

In opposition, defendants Bright Medical Supply Corp. (Hereinafter “Bright”) and All Boro submit an attorney’s affirmation whereby they contend that plaintiff has not made a prima facie showing of entitlement to summary judgment through admissible evidence. To begin, with respect to plaintiff’s argument regarding issue preclusion as to defendant All Boro, defendants All Boro and Bright contend that plaintiff did not establish through admissible evidence that the two declaratory judgment actions were related. Said defendants contend further that the declaratory actions involve different accidents and that the accidents involve different claimants.

In addition, defendants All Boro and Bright oppose plaintiff’s motion as it pertains to the September 18, 2008 and October 7, 2008 accidents, as the other contested accidents do not involve All Boro or Bright. With respect to the September 18, 2008 accident, defendants All

Boro and Bright contend that Plaintiff denied claims relating to said accident on the grounds that there was material misrepresentation and that the loss was not an “accident.” Additionally, with respect to Nicolson Lessage and Patrick Laurent, the claims were also denied for their failure to attend examinations under oath. With respect to the October 7, 2008 accident, plaintiff denied the claims on the grounds that there was material misrepresentation, that the loss was not an “accident,” and that the claimants’ failed to attend examinations under oath. Defendants All Boro and Bright argue that plaintiff has not established that the accidents were “staged accidents” or that there was any material misrepresentation or non-cooperation by the claimants.

Defendants further argue that there is no evidence that the EUO letters were timely and properly mailed.

Regardless of whether the March 16, 2011 decision in *Progressive Preferred Insurance Company v. Marie Jean Et. Al.*, under Nassau County Index number 19437/08, is binding upon defendant All Boro herein, plaintiff has made a prima facie showing of entitlement to summary judgment with respect to the losses at issue in the instant matter, through the submission of the affidavit of Senior Medical Claims Representative, Gary Lamay, as well as the evidence that the five losses covered by the Marie Laine a/k/a Marie L. Laine policy each occurred just over two months from the policy’s inception and within days of each other; that the loss under the Jean Lamartine Laine a/k/a Jean L. Laine policy occurred within nine days of that policy’s inception; that Jean L. Laine was the operator of the Marie Laine vehicle in the September 1, 2008 loss; and that the Plaintiff received bills for defendant Marie Laine for the September 1, 2008 loss, despite the fact that she is not listed as being involved in said accident on the police report. Same establishes plaintiff’s “fact or founded belief” that the loss was staged and, as such, that the alleged injuries do not arise out of an insured incident. (*See, State Farm Mut. Auto. Ins. Co. v. Laguerre*, 305 A.D.2d 490, 759 N.Y.S.2d 531 (2d Dept. 2003); *Central General Hosp. v. Chubb Group of Ins. Cos.*, 90 N.Y.2d 195, 659 N.Y.S.2d 246 (1997)). An insurer may premise its defense that no coverage existed because the accident was staged by a preponderance of the evidence and is not required to establish that the subject condition was the product of fraud by clear and convincing evidence. (*V.S. Medical Services, P.C. v. Allstate Ins. Co.*, 25 Misc.3d 39, 889 N.Y.S.2d 360 (App. Term 2009)). “While an insurer may put forth evidence of a fraudulent

scheme in order to prove that a collision was not an accident, the insurer need not prove fraud.”
(Id., citing Matter of Eagle Ins. Co. v. Davis, 22 A.D.3d 846, 803 N.Y.S.2d 679 (2005)).

Further, a collision caused in the furtherance of an insurance fraud scheme is not a covered accident under a policy of insurance. (*Matter of Eagle Ins. Co. v. Davis, 22 A.D.3d 846, 803 N.Y.S.2d 679 (2005); State Farm Mut. Auto. Ins. Co. v. Laguerre, 305 A.D.2d 490, 759 N.Y.S.2d 531 (2d Dept. 2003); Matter of Allstate Ins. Co. v. Massre, 14 A.D.3d 610, 759 N.Y.S.2d 531 (2d Dept. 2003)*). Where there is a lack of coverage for the incident in the first instance, the plaintiff is not required to issue a disclaimer. (*Central General Hosp. v. Chubb Group of Ins. Cos., 90 N.Y.2d 195, 659 N.Y.S.2d 246 (1997)*).

In opposition, defendants All Boro and Bright, through the submission of an affirmation by their counsel and no other evidence, have failed to raise a triable issue of fact sufficient to defeat plaintiff’s prima facie showing of entitlement to summary judgment.

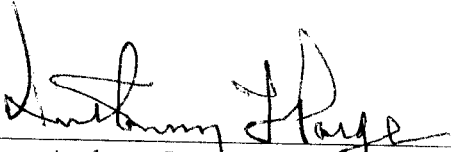
Accordingly, plaintiff’s motion for summary judgment is granted as against All boro Psychological Services, P.C., Bright Medical Supply Corp., New York Diagnostic Medical Care, P.C., BNN Chiropractic, Great Healthpoint Acupuncture, P.C., Nguyen Chiropractic, P.C., Spectrum 205 Medical, P.C., Total Body Chiropractic, P.C., Triumph Medical, P.C., VRS Medical, PLLC, Hollis Medical Care, P.C., Huo Acupuncture, P.C., and Quality Psychological Services, P.C., and the Court makes the following declarations with respect to said defendants:

With respect to the losses of September 1, 2008, September 18, 2008, October 7, 2008, October 12, 2008, and October 15, 2008, under a policy issued to defendant Marie Laine a/k/a Marie L. Laine bearing policy number 20963291-0, and for the loss of October 25, 2008 under a policy issued to defendant Jean LaMartine Laine a/k/a Jean L. Laine bearing policy number 460034880:

- (1) Plaintiff has no duty to provide liability coverage to any of the individual defendants;
- (2) Plaintiff has no duty to defend or indemnify any of the individual defendants in any pending or future actions that have or may be brought as a result of the above-noted losses;
- (3) Plaintiff has no duty to provide coverage for claims for no-fault or uninsured motorist benefits made by or on behalf of any person or entity in connection to the above-noted losses.

Plaintiff's request for costs and attorneys' fees is denied. Submit judgment on notice by regular mail.

Dated: October 21, 2011


Anthony L. Parga, J.S.C.

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