

Progressive Cas. Ins. Co. v Excel Prods. Inc.

2015 NY Slip Op 32943(U)

July 10, 2015

Supreme Court, Nassau County

Docket Number: 002660/15

Judge: Randy Sue Marber

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**
JUSTICE

TRIAL/IAS PART 12

PROGRESSIVE CASUALTY INSURANCE COMPANY,
PROGRESSIVE ADVANCED INSURANCE COMPANY,
PROGRESSIVE AMERICAN INSURANCE COMPANY,
PROGRESSIVE DIRECT INSURANCE COMPANY,
PROGRESSIVE GARDEN STATE INSURANCE
COMPANY, PROGRESSIVE NORTHERN INSURANCE
COMPANY, PROGRESSIVE NORTHWESTERN
INSURANCE COMPANY, PROGRESSIVE PREFERRED
INSURANCE COMPANY, PROGRESSIVE PREMIER
INSURANCE COMPANY OF IL, PROGRESSIVE
SPECIALTY INSURANCE COMPANY, and NATIONAL
CONTINENTAL INSURANCE COMPANY,

Plaintiffs,

-against-

EXCEL PRODUCTS INC,

Defendant.

Index No.: 002660/15
Motion Sequence...01
Motion Date...06/30/15
XXX

Papers Submitted:
Notice of Motion.....X

Upon the foregoing papers, this unopposed motion submitted by the Plaintiffs,
PROGRESSIVE CASUALTY INSURANCE COMPANY, PROGRESSIVE ADVANCED
INSURANCE COMPANY, PROGRESSIVE AMERICAN INSURANCE COMPANY,
PROGRESSIVE DIRECT INSURANCE COMPANY, PROGRESSIVE GARDEN STATE

[* 2]

INSURANCE COMPANY, PROGRESSIVE NORTHERN INSURANCE COMPANY, PROGRESSIVE NORTHWESTERN INSURANCE COMPANY, PROGRESSIVE PREFERRED INSURANCE COMPANY, PROGRESSIVE PREMIER INSURANCE COMPANY OF IL, PROGRESSIVE SPECIALTY INSURANCE COMPANY, and NATIONAL CONTINENTAL INSURANCE COMPANY, (hereinafter collectively referred to as "PROGRESSIVE" or "Plaintiffs"), seeking an order, pursuant to CPLR § 3215, granting the Plaintiffs a default judgment against the Defendant, EXCEL PRODUCTS INC. (hereinafter referred to as "Defendant"), is determined as hereinafter provided.

The Plaintiffs commenced this action on or about March 24, 2015, by the filing of a Summons and Verified Complaint in the Nassau County Clerk's Office. (*See* Copy of Summons and Verified Complaint annexed to the Notice of Motion as Exhibit "A") The Complaint seeks a declaration that the Defendant is not entitled to reimbursement for medical services purportedly rendered and billed to the Plaintiffs pursuant to the no-fault laws of New York's Insurance Law, based upon the Defendant's failure to satisfy the conditions precedent to coverage or to verify claims as required by law, that the Defendant may not collect against any patient-assignors personally and that any liens between the Defendant and the patients are null and void.

Submitted in support of the Plaintiffs' motion is the Affidavit of Andrew Serynek, sworn to on May 14, 2015, an employee of the Plaintiff, PROGRESSIVE CASUALTY INSURANCE COMPANY, the corporation responsible for administering

claims of the Plaintiff corporation. Mr. Serynek states in his Affidavit that he possesses personal knowledge of the facts supporting the Plaintiffs' claims. According to Mr. Serynek, the Defendant failed to satisfy conditions precedent to coverage and failed to verify their claims as required by law. Specifically, the Plaintiffs allege that they have received numerous no-fault reimbursement requests from the Defendant titled, "Verification of Treatment by Attending Physician or Other Provider of Health Service" (hereinafter "Verification of Treatment"), which are necessary for any health care provider seeking reimbursement for medical services under New York No-Fault laws. Each claim submitted by the Defendant is governed by a Progressive insurance policy and New York State Regulation 68A, section 65-1.1.

The Plaintiffs commenced an investigation for the following reasons: (1) the Defendant's possible involvement in a ring of Durable Medical Equipment ("DME") providers or shell corporations as part of a network of providers following a pre-determined treatment plan and network of referrals being dictated by a management company; (2) possible reincarceration of Maxford, Sure Way NY Inc & Pravel Inc.; and, (3) billing for services not rendered or billed, upcode/overbilling and high frequency of billing miscellaneous codes without submitting invoices.

PROGRESSIVE investigators also attempted to conduct a site visit to the location where the Defendant purportedly rendered medical services to the Progressive-insured patients on August 13, 2014 and August 27, 2014. PROGRESSIVE was unable to

[*4]

find evidence of any medical facility at the Defendant's purported location. PROGRESSIVE investigators also left voice messages for the Defendant on August 13, 2014, August 20, 2014 and August 27, 2014, but did not receive a response.

In furtherance of the investigation, the Plaintiffs exercised their rights under New York State Regulation 68A § 65-1.1 to request Examinations Under Oath and claims-related documents. The Plaintiffs mailed repeated demands for the Examinations Under Oath and documents to the Defendant, to no avail.

The Court finds the Plaintiffs' proof sufficient to demonstrate that the Defendant was timely served, and to date, the Defendant failed to answer the complaint or otherwise appear in this action. The Plaintiffs submitted proper proof of service of the Summons and Verified Complaint. (*See* Affidavit of Service, dated April 7, 2015, annexed to the Plaintiffs' Notice of Motion as Exhibit "B") The Plaintiffs also submitted proper proof of service of Notice of Service Pursuant to BCL 306 (b). (*See* Affidavit of Service, dated May 13, 2015, attached to the Plaintiffs' Notice of Motion as Exhibit "B")

It also appears from a review of the documentation presented that all necessary parties have been served with a notice of this motion for a default judgment against the Defendant. (*See* Affidavit of Service, attached to the Plaintiff's Notice of Motion) Additionally, more than thirty (30) days has elapsed since completion of the service of the summons and complaint, and thus, the Defendant is in default for failing to answer or otherwise appear in this action.

Accordingly, it is hereby

ORDERED, that the Plaintiffs' motion seeking an order granting them a default judgment against the Defendant, is **GRANTED**; and it is further

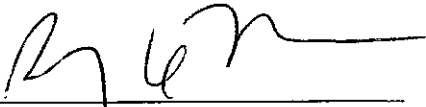
ORDERED, ADJUDGED and DECREED, that the Plaintiffs are under no obligation to pay any of the no-fault claims of the Defendant, as referenced in the Affidavit of Andrew Serynek and the Summons and Verified Complaint, for which Examinations Under Oath and documents were requested on grounds that the Defendant has not complied with conditions precedent to reimbursement for those claims under No-Fault Regulations and New York Insurance Law; and it is further

ORDERED, ADJUDGED, and DECREED, that the Defendant may not collect against any patient-assignors personally as to any of the no-fault claims of the Defendant, as referenced in the Affidavit of Andrew Serynek and the Summons and Verified Complaint, for which Examinations Under Oath and documents were requested and that any liens between the Defendant and the patients for said claims are null and void; and it is further

ORDERED, that the Plaintiffs' counsel shall serve a copy of this Order upon the Defendant by certified mail, return receipt requested, and by regular mail within twenty (20) days of the date of entry of this Order.

This constitutes the decision and order of the Court.

DATED: Mineola, New York
July 10, 2015



Hon. Randy Sue Marber, J.S.C.
XXX

ENTERED
JUL 10 2015
NASSAU COUNTY
COUNTY CLERK'S OFFICE