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| <b>American Tr. Ins. Co. v Joseph</b>                                                                                                                                                                                          |
| 2019 NY Slip Op 31749(U)                                                                                                                                                                                                       |
| June 19, 2019                                                                                                                                                                                                                  |
| Supreme Court, New York County                                                                                                                                                                                                 |
| Docket Number: 158209/2018                                                                                                                                                                                                     |
| Judge: Louis L. Nock                                                                                                                                                                                                           |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTYPRESENT: HON. LOUIS L. NOCK

PART

IAS MOTION 38EFM

*Justice*

-----X

INDEX NO. 158209/2018

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

MOTION DATE 04/26/2019,  
04/26/2019

- V -

MOTION SEQ. NO. 001 001YVONNIE JOSEPH, AMBEL ACUPUNCTURE, PC, BASEM  
MANSOUR, PT, PC, BRIDGES PSYCHOLOGICAL SERVICES,  
PC, COLIN CLARKE MD, P.C., ECLIPSE MEDICAL IMAGING,  
PC, EXON MEDICAL EQUIPMENT, PC, METROPOLITAN  
INTERVENTIONAL MEDICAL SERVICES, PC, PALM  
CHIROPRACTIC, PC, QUEENS MEDICAL DIAGNOSTIC, PC

## DECISION AND ORDER

Defendant.

-----X

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

were read on this motion to/for

JUDGMENT - DECLARATORY

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

were read on this motion to/for

JUDGMENT - DEFAULT

Upon the foregoing documents, the motion of plaintiff American Transit Insurance Company ("Plaintiff") for entry of a default judgment and declaratory judgment against defendants Yvonnice Joseph ("Joseph"), Ambel Acupuncture, PC, Basem Mansour, PT, PC, Bridges Psychological Services, PC, Colin Clarke Md, P.C., Eclipse Medical Imaging, PC, Metropolitan Interventional Medical Services, PC, Palm Chiropractic, PC, Queens Medical Diagnostic, PC (together, "Defendants") is granted on default and without opposition, in accord with the following memorandum and for the reasons set forth in the motion.<sup>1</sup>

<sup>1</sup> Subsequent to the filing of this motion, Plaintiff settled its claims with defendant Exon Medical Equipment, PC ("Exon") and that portion of the motion that seeks judgment against Exon is withdrawn (NYSCEF Doc. No. 19).

Plaintiff American Transit Insurance Company (“Plaintiff”) issued a motor vehicle insurance policy to Joseph, under a New York policy of insurance numbered B514107 (the “Policy”). The Policy includes a no-fault endorsement which provided coverage to an insured or an eligible person in the amount of \$50,000 for all necessary expenses resulting from a motor vehicle accident. On September 1, 2017, a vehicle owned by Joseph was involved in a motor vehicle accident. Joseph made a claim to Plaintiff as a purported eligible person of the policy. The remaining defendants are health care providers who purportedly provided health care services to Joseph in connection with the accident, and to whom she assigned her rights to collect no-fault benefits. All Defendants were served with process and have failed to appear in this action.

Plaintiff has submitted proof that it mailed notices to Joseph on three separate occasions requesting that she appear for an Independent Medical Examination (“IME”), and that Joseph failed to appear for each scheduled IME (NYSCEF Doc. No. 8). Failure to submit to a duly requested IME constitutes a breach of a condition precedent to coverage under a no-fault policy (*Hertz Corp v Active Care Medical Supply Corp.*, 123 AD3d 311 [1st Dept 2015]; *Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC*, 82 AD3d 559 [1st Dept 2011]). Plaintiff, therefore, has the right to deny Joseph’s claims and those of her assignees (*id.*).

Accordingly, it is

ORDERED that Plaintiff’s motion for entry of a default judgment and declaratory judgment against defendants Yvonne Joseph, Ambel Acupuncture, PC, Basem Mansour, PT, PC, Bridges Psychological Services, PC, Colin Clarke Md, P.C., Eclipse Medical Imaging, PC, Metropolitan Interventional Medical Services, PC, Palm Chiropractic, PC, Queens Medical Diagnostic, PC is granted; and it is further

ADJUDGED and DECLARED that defendant Yvonne Joseph is not an eligible injured person entitled to no fault benefits under American Transit insurance policy B514107, Claim No. 1007680-02 or under New York Department of Insurance Regulation 68; and it is further

ADJUDGED and DECLARED that plaintiff is not obligated to honor or pay claims for reimbursement submitted by Ambel Acupuncture, PC, Basem Mansour, PT, PC, Bridges Psychological Services, PC, Colin Clarke Md, P.C., Eclipse Medical Imaging, PC, Metropolitan Interventional Medical Services, PC, Palm Chiropractic, PC, or Queens Medical Diagnostic, PC, as assignees of defendant Yvonne Joseph, under American Transit insurance policy B514107, Claim No. 1007680-02, and Plaintiff is not required to provide, pay, honor, or reimburse any claims set forth in this proceeding, in any current or future proceeding, including, without limitation arbitration and/or lawsuits seeking to recover no-fault benefits arising under American Transit policy B514107, Claim No. 1007680-02 from the alleged accident of September 1, 2017 involving defendant Yvonne Joseph; and it is further

ADJUDGED and DECLARED that Plaintiff is not required to provide, pay, or honor any current or future claims for no-fault benefits under the Mandatory Personal Injury Protection endorsement under American Transit policy B514107, Claim No. 1007680-02, and Plaintiff is not required to provide, pay, honor, or reimburse any claims set forth in this proceeding, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under American Transit policy B514107, Claim No. 1007680-

02 from the alleged accident of September 1, 2017 involving defendant Yvonne Joseph.

6/19/2019  
DATE

CHECK ONE:

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CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

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DENIED

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NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

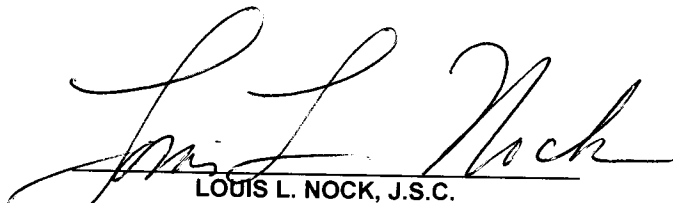
FIDUCIARY APPOINTMENT

☒

OTHER

☐

REFERENCE

  
LOUIS L. NOCK, J.S.C.