

American Tr. Ins. Co. v Aguilar
2019 NY Slip Op 33269(U)
November 1, 2019
Supreme Court, New York County
Docket Number: 650256/2019
Judge: Arthur F. Engoron
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY****PRESENT: HON. ARTHUR F. ENGORON****PART****IAS MOTION 37EFM***Justice*

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

INDEX NO. 650256/2019**MOTION DATE** 09/04/2019**MOTION SEQ. NO.** 001

- v -

CECILIA DEL CARMEN HERNANDEZ AGUILAR, ALEXIOS
APAZIDIS MD PC, ALL CITY FAMILY HEALTHCARE
CENTER INC, AUTORX, AVISHAI T NEUMAN MD
PLLC, COMMUNITY MEDICAL IMAGING PC, CPM MED
SUPPLY INC, DNA PHARMACY INC, EXCELL CLINICAL
LAB, GLOBAL REHABILITATION MEDICAL PC, HIGH
LEVEL CARE PHYSICAL THERAPY PC, JAGA MEDICAL
SERVICES PC, THE JAMAICA HOSPITAL MEDICAL
CENTER DIAGNOSTICS AND TREATMENT CENTER
CORPORATION, LOGIC CHIROPRACTIC PC, LR MEDICAL
PLLC, MYRTLE AVENUE TRADING LLC, PHOENIX
MEDICAL SERVICES PC, VSL ACUPUNCTURE PC

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion for

JUDGMENT - DEFAULT

Upon the foregoing documents, it is hereby ordered that plaintiff's motion for a declaratory judgment on default is granted as against Cecilia Del Carmen Hernandez Aguilar, Alexios Apazidis M.D. P.C., Autorx, Avishai T. Neuman, MD PLLC, CPM Med Supply, Inc., DNA Pharmacy Inc., Excell Clinical Lab, Global Rehabilitation Medical PC, L.R. Medical PLLC, Myrtle Avenue Trading LLC, and Phoenix Medical Services PC.

On January 13, 2019, plaintiff, American Transit Insurance Company, commenced this action against defendants Cecilia Del Carmen Hernandez Aguilar (the "claimant-defendant"), Alexios Apazidis M.D. P.C., All City Family Healthcare Center, Inc., Autorx, Avishai T. Neuman, MD PLLC, Community Medical Imaging, P.C., CPM Med Supply, Inc., DNA Pharmacy Inc., Excell Clinical Lab, Global Rehabilitation Medical PC, High Level Care Physical Therapy P.C., Jaga Medical Services, P.C., The Jamaica Hospital Medical Center Diagnostic and Treatment Center Corporation, Logic Chiropractic, PC, L.R. Medical PLLC, Myrtle Avenue Trading LLC, Phoenix Medical Services PC, and VSL Acupuncture PC (all except Cecilia Del Carmen Hernandez Aguilar, the "medical provider defendants"), for a judgment, declaring that there is no no-fault coverage for benefits claimed arising out of a July 24, 2017 motor vehicle accident,

Plaintiff issued a New York policy of insurance to Ramon A. Colon that included a no-fault endorsement, which provided coverage for any eligible injured person for all necessary medical expenses, lost wages, and other expenses arising out of a motor vehicle accident up to the minimum statutory amount of \$50,000.00.

On July 24, 2017, Cecilia Del Carmen Hernandez Aguilar (the “claimant-defendant”) was allegedly injured in a motor vehicle accident. The claimant-defendant notified plaintiff of the alleged injuries arising out of the subject accident. Plaintiff assigned claim number 1001910-03 to claimant-defendant’s claim. Claimant-defendant sought medical treatment from the medical provider defendants for the alleged injuries arising out of the subject accident, and she assigned the right to collect no-fault benefits to the medical provider defendants. The medical provider defendants submitted no-fault claims to plaintiff to recover for the medical services allegedly provided to the claimant-defendant, and they have commenced (or have the right to commence) court actions and/or arbitration proceedings against plaintiff. The claimant-defendant notified plaintiff of her address by submitting the Application for No-Fault Benefits. Plaintiff hired a third-party vendor, Exam Works, to schedule an independent medical examination (“IME”) of the claimant-defendant. She failed to appear for an IME both on the initially scheduled date of May 16, 2018 and on the rescheduled date of June 13, 2018. Consequently, plaintiff denied all claims received after the latter IME date of June 13, 2018.

Between January 14 and 30, 2019, plaintiff served the claimant-defendant and medical provider defendants with the Summons and Complaint and with CPLR 3215(g) notices.

On February 14, 2019, the medical provider defendant Jamaica Hospital Medical Center s/h/a The Jamaica Hospital Medical Center Diagnostic and Treatment Center, through its attorneys, Martin Clearwater & Bell LLP, (the “answering defendant”) answered the plaintiff’s Complaint with (1) denials of knowledge or information sufficient to form a belief as to allegations contained in the Complaint, (2) thirty affirmative defenses, and (3) a counterclaim that plaintiff commenced this action to compel the answering defendant to pay a large sum to enforce its legal rights under the insurance contract. This Answer demanded a judgment, dismissing the Complaint, and the action’s costs and disbursements. On February 14, 2019, pursuant to CPLR 3130, the answering defendant also demanded that plaintiff answer interrogatories. Additionally, on February 14, 2019, the answering defendant submitted a notice to take deposition upon oral argument of plaintiff and co-defendants on March 5, 2019. Additionally, the answering defendant submitted a (1) CPLR Article 31 demand for Medicaid/Medicare lien information, (2) a CPLR 3121 (medical examination) demand, (3) CPLR 3101 notice of discovery and inspection of documents, (4) a CPLR 3101(e) and 3120 notice of discovery and inspection of statements, (5) a demand for CPLR 4545 verification of whether plaintiff was reimbursed or indemnified for economic loss claimed in the subject action and whether plaintiff made claim for payment for economic loss, (6) a demand for CPLR 2103(e) service, (7) a CPLR 3101(d) demand for discovery of expert witness, (8) a CPLR Article 31 demand for witnesses’ names, (9) a CPLR 2103(b)(5) objection to service of papers via electronic means, and (10) a CPLR 3120 notice of discovery and inspection of photographic evidence.

On May 21, 2019, medical provider defendants All City Family Healthcare Center, Inc., Jaga Medical Services, P.C., Logic Chiropractic, P.C., and VSL Acupuncture P.C. answered the

plaintiff's Complaint with various denials, responses to the causes of action, and forty affirmative defenses. On May 21, 2019, these answering medical provider defendants also submitted a (1) CPLR 3120 demand for discovery and inspection, (2) CPLR 3101(d) demand for expert witness discovery, (3) CPLR 3101 *el seq.* demand for fact (lay) witness disclosure from plaintiff, (4) CPLR 3101 and 3107 notice to take deposition upon oral examination, and (5) CPLR 2103(b)(5) notice, declining electronic service.

On July 22, 2019, pursuant to CPLR 3215(a), plaintiff moved for a default judgment against the claimant-defendant and the non-answering medical provider defendants, namely, Aguilar, Alexios Apazidis, M.D. P.C., Autorx, Avishai T. Neuman, MD PLLC, Community Medical Imaging, PC, CPM Med Supply, Inc., DNA Pharmacy Inc., Excell Clinical Lab, Global Rehabilitation Medical PC, High Level Care Physical Therapy P.C., LR Medical PLLC, Myrtle Avenue Trading LLC, and Phoenix Medical Services PC.

Pursuant to CPLR 3215(f), plaintiff established that it is entitled to a declaratory judgment on default against defendants by submitting the following: the Police Report for the July 24, 2017 motor vehicle accident; the May 31, 2019 Affidavit of Merit of Cheryl Glaze, a No-Fault Claims Manager with plaintiff; the July 22, 2019 Affirmation in Support of William Larkin, Esq., with Larkin Farrell, LLC, attorneys for plaintiff; the NF-2 Application for No-Fault Benefits; the letters scheduling IMEs for May 16, 2018 and June 13, 2018; and the Denial of Claim form.

In October 2019, the previously non-answering medical provider defendant Community Medical Imaging, P.C., through its attorneys, The Law Offices of Andrew L. Saraga, P.C., of counsel to Ursulova Law Offices, P.C., answered plaintiff's Complaint with fifteen affirmative defenses and a counterclaim.

In a Stipulation dated October 10, 2019, (1) plaintiff vacated answering medical provider defendant Community Medical Imaging, P.C.'s default, (2) plaintiff accepted Community Medical Imaging, P.C.'s Answer nunc pro tunc, (3) plaintiff withdrew the motion to enter a default judgment with respect to Community Medical Imaging, P.C. only, and (4) Community Medical Imaging, P.C. withdrew any opposition and/or cross motion, if applicable.

In an undated Stipulation, plaintiff and the medical provider defendants Jaga Medical Services, P.C., High Level Care PT, P.C., and Logic Chiropractic, P.C. (the "releasing defendants") agreed that (1) releasing defendants were discontinuing all lawsuits filed against plaintiff for medical services provided to the claimant-defendant arising out of the July 2017 motor vehicle accident, (2) releasing defendants would withdraw all arbitration matters filed against plaintiff for medical services provided to the claimant-defendant arising out of the July 2017 motor vehicle accident, (3) releasing defendants were withdrawing all pending claims submitted to plaintiff for medical services provided to the claimant-defendant arising out of the July 2017 motor vehicle accident, (4) releasing defendants would not submit future claims for subject services, (5) the action was discontinued with prejudice and without costs and/or fees to either party, (6) plaintiff would agree not to seek reimbursement paid to releasing defendants arising out of the subject accident, (7) the discontinuance would in no way affect any settlement stipulation between plaintiff and releasing defendants entered into prior to this Stipulation, and any settlement stipulation entered into after this Stipulation for a claim by releasing defendants for services provided to the

claimant-defendant will be null and void, and (8) all counter-claims, if any, interposed by the releasing defendants were discontinued.

Conclusion

Thus, for the reasons stated herein, plaintiff's motion for a declaratory judgment on default is granted as against Cecilia Del Carmen Hernandez Aguilar, Alexios Apazidis M.D. P.C, Autorx, Avishai T. Neuman, MD PLLC, CPM Med Supply, Inc., DNA Pharmacy Inc., Excell Clinical Lab, Global Rehabilitation Medical PC, L.R. Medical PLLC, Myrtle Avenue Trading LLC, and Phoenix Medical Services PC.

The Clerk is hereby directed to enter judgment, declaring that defendants Cecilia Del Carmen Hernandez Aguilar, Alexios Apazidis M.D. P.C, Autorx, Avishai T. Neuman, MD PLLC, CPM Med Supply, Inc., DNA Pharmacy Inc., Excell Clinical Lab, Global Rehabilitation Medical PC, L.R. Medical PLLC, Myrtle Avenue Trading LLC, and Phoenix Medical Services PC are not entitled to no-fault benefits under the subject insurance policy for the July 24, 2017 motor vehicle accident.

Plaintiff and the remaining medical provider defendants, All City Family Healthcare Center, Inc., Community Medical Imaging P.C., High Level Care Physical Therapy P.C., Jaga Medical Services P.C., The Jamaica Hospital Medical Center Diagnostic and Treatment Center Corporation, Logic Chiropractic, P.C., and VSL Acupuncture P.C. are hereby directed to appear for a preliminary conference on Tuesday, November 26, 2019 at 10:00 AM, 60 Centre Street, Room 418, New York, NY.

<u>11/1/2019</u>			
DATE		ARTHUR F. ENGORON, J.S.C.	
CHECK ONE:	☐ CASE DISPOSED	☒ NON-FINAL DISPOSITION	
	☒ GRANTED ☐ DENIED	☐ GRANTED IN PART	☐ OTHER
APPLICATION:	☐ SETTLE ORDER	☐ SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN	☐ FIDUCIARY APPOINTMENT	☐ REFERENCE