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| American Tr. Ins. Co. v Walker |
| 2020 NY Slip Op 30736(U) |
| January 3, 2020 |
| Supreme Court, New York County |
| Docket Number: 156142/18 |
| Judge: Melissa A. Crane |
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MELISSA A. CRANE PART 15

HON. MELISSA CRANE Justice

AMERICAN TRANSIT INSURANCE COMPANY

- v -

AMEIL DALTON WALKER, AMBULATORY SURGICAL CENTER OF ENGLEWOOD, ASCE ANESTHESIA, PC, BENNETT MEDICAL, PC, CHIROPRACTIC DIAGNOSTIC, PC, CITIMED SERVICES, PA, DAMADIAN MRI IN CANARSIE, PC, DYAMIC SURGERY CENTER, LLC, JFL MEDICAL CARE PC, HEALTHPLUS SURGICAL CENTER, LLC, INTEGRATED CHIROPRACTIC OF NY, PC, INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, LLC d/b/a METRO PAIN CENTERS, LLC, LEOMAX SUPPLIES INC, LONGVEITY MEDICAL SUPPLY, INC, MILL BASIN CHIROPRACTIC, PC, MILL MEDICAL, PC, NEW YORK RECOVERY PT, PC, ROCK ACUPUNCTURE, PC, SPINE CARE OF NJ, PC, SUTTER PHARMACY INC

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

156142/18 157146/2018 MS. #002

REARGUMENT/RECONSIDERATION

The following papers, numbered _ to _ were read on this motion to/for _____.

PAPERS NUMBERED

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 is

This court grants plaintiff's motion to reargue, and upon reargument grants plaintiff's American Transit's motion for default judgment pursuant to CPLR 3215 against non-answering defendants AMBULATORY SURGICAL CENTER OF ENGLEWOOD, ASCE ANESTHESIA, PC, CHIROPRACTIC DIAGNOSTIC, PC, DAMADIAN MRI IN CANARSIE, PC, INTEGRATED CHIROPRACTIC OF NY, PC, INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, LLC, d/b/a METRO PAIN CENTERS, MILL BASIN CHIROPRACTIC, PC, MILL MEDICAL, PC, SPINE CARE OF NJ, PC, SUTTER PHARMACY, INC, and NEW YORK RECOVERY PT, PC (hereinafter, "nonanswering defendants"), and grants plaintiff's motion for summary judgment pursuant to CPLR 3212 against AMEIL DALTON WALKER (hereinafter, the "answering defendant"). Plaintiff

has submitted proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of defendant's failure to answer or appear (*see* CPLR 3215; *see also*, *Atlantic Cas. Ins. Co. v RJNJ Services, Inc.*, 89 AD3d 649 [2nd Dept 2011]). Plaintiff demonstrates prima facie its denial of no-fault claims based on Ameil Dalton Walker's ("Walker") failure to appear for scheduled Independent Medical Examinations ("IMEs") on January 3, 2018 and January 22, 2018.

This case arises from an automobile accident that occurred on June 5, 2017, involving defendant Walker. Walker alleges that she sustained serious bodily injuries as a result of the collision that occurred on June 5, 2017, that involved the vehicle that the insured, JURA CORPORATION, owned. Walker submitted claims to plaintiff, American Transit Insurance Company ("American Transit") for no-fault benefits under the insurance policy that plaintiff issued to the insured, JURA CORPORATION. Walker assigned the rights to collect no-fault benefits to co-defendants/medical providers. Plaintiff commenced an action on or about June 30, 2018, by a Summons and Complaint, seeking a declaratory judgment against claimant as well as numerous co-defendants/medical providers under American Transit insurance policy BC B620479, Claim No: 680087-03.

Plaintiff submits, *inter alia*: IME request letters; an affidavit from Chevan Douglas, claim representative at American Transit who attests to the processing of bills, requests for additional verification, and issuance of denial of claim forms in this case; Walter Distler, Comprehensive Medical Reviews, LLC employee, who attests to the mailing of the IME scheduling letters; an affidavit from Luis Campbell, mailroom supervisor at American Transit; and Robert Snitkoff and John Johnson, Chiropractors whom Walker's IMEs were scheduled with, and who attest to plaintiff's non-appearance at the scheduled IMEs.

Plaintiff has discontinued this action against defendants BENNETT MEDICAL, PC, ROCK ACUPUNCTURE, PC, JFL MEDICAL CARE, PC, LEOMAX SUPPLIES, INC, LONGEVITY MEDICAL SUPPLY, INC, CITIMD SERVICES, PA, DYNAMIC SURGERY CENTER, LLC, and HEALTHPLUS SURGICAL CENTER, LLC (*see* NYSCEF Doc No 8, 24, 29, 38, 40) (the "Releasing

Defendants"). Therefore, plaintiff's motion to reargue its motion for a default judgment and summary judgment is moot as to the releasing defendants.

Accordingly, it is

ORDERED that the court grants plaintiff's motion to reargue, and upon reargument grants plaintiff's American Transit's motion for default judgment against defendants AMBULATORY SURGICAL CENTER OF ENGLEWOOD, ASCE ANESTHESIA, PC, CHIROPRACTIC DIAGNOSTIC, PC, DAMADIAN MRI IN CANARSIE, PC, INTEGRATED CHIROPRACTIC OF NY, PC, INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, LLC, d/b/a METRO PAIN CENTERS, MILL BASIN CHIROPRACTIC, PC, MILL MEDICAL, PC, SPINE CARE OF NJ, PC, SUTTER PHARMACY, INC, and NEW YORK RECOVERY PT, PC; and grants plaintiff's motion for summary judgment against defendant AMEIL DALTON WALKER, without opposition, and it is further

ORDERED that the court strikes defendant AMEIL DALTON WALKER's answer; and it is further

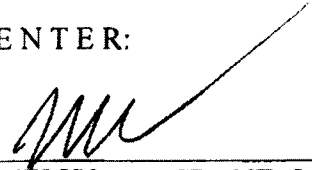
ADJUDGED AND DECLARED that defendant AMEIL DALTON WALKER is not eligible injured persons entitled to no-fault benefits under American Transit insurance policy BC B620479, Claim No: 680087-03; and it is further

ADJUDGED AND DECLARED that defendants AMBULATORY SURGICAL CENTER OF ENGLEWOOD, ASCE ANESTHESIA, PC, CHIROPRACTIC DIAGNOSTIC, PC, DAMADIAN MRI IN CANARSIE, PC, INTEGRATED CHIROPRACTIC OF NY, PC, INTERVENTIONAL PAIN CONSULTANTS OF NORTH JERSEY, LLC, d/b/a METRO PAIN CENTERS, MILL BASIN CHIROPRACTIC, PC, MILL MEDICAL, PC, SPINE CARE OF NJ, PC, SUTTER PHARMACY, INC, and NEW YORK RECOVERY PT, PC, are not entitled to no-fault coverage for the motor vehicle accident that occurred on June 5, 2017, involving individual defendant AMEIL DALTON WALKER,

for claims submitted under American Transit insurance policy BC B620479, Claim No: 680087-03, as referenced in the complaint, and plaintiff American Transit has no duty to provide, pay, honor, or reimburse any claims in any current or future proceedings, including without limitation arbitrations and/or lawsuits, seeking to recover no-fault benefits arising out of the June 5, 2017 accident.

DATED: 1-3-2020, ~~2019~~
New York, New York

ENTER:



MELISSA A. CRANE, J.S.C

NON. MELISSA A. CRANE
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
Check if appropriate: DO NOT POST REFERENCE SETTLE ORDER SUBMIT ORDER FIDUCIARY APPOINTMENT