

<b>New York Central Mut. Fire Ins. Co. v Gurley</b>
2020 NY Slip Op 31550(U)
May 3, 2020
Supreme Court, New York County
Docket Number: 655869/2019
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**  
Justice

NEW YORK CENTRAL MUTUAL FIRE  
INSURANCE COMPANY

**INDEX NO.** 655869/2019  
**MOTION DATE** \_\_\_\_\_  
**MOTION SEQ. NO.** 001  
**MOTION CAL. NO.** \_\_\_\_\_

- v -

GIAVANNI R. GURLEY, RONNELL GURLEY,  
FRANK PICKENS, AB MEDICAL SUPPLY, INC.,  
AK GLOBAL SUPPLY CORP., ATLAS PT, P.C.,  
ATLAS RADIOLOGY, P.C., BROOK CHIROPRACTIC OF NY, P.C., M BUSLON PHYSICAL  
THERAPY, P.C., COMPREHENSIVE PSYCHOLOGICAL EVAL, P.C., DOS MANOS  
CHIROPRACTIC, P.C., ENERGY CHIROPRACTIC, GC CHIROPRACTIC, P.C., JIL  
ACUPUNCTURE, P.C., M&D ELITE PHARMACY, LLC., METROPOLITAN MEDICAL &  
SURGICAL, P.C., NEW YORK CORE CHIROPRACTIC, P.C., DR. OFFENBACHER MEDICAL  
IMAGING, PLLC, JULES FRANCOISE PARISIEN, M.D., P.C., QUALITY CUSTOM MEDICAL  
SUPPLY, INC., M. EL SAYED PHYSCIAL THERAPY, P.C., SHERMAN ABRAMS  
LABORATORY, INC., ZHONG QING ZHOU, LAC.

**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 case arises from an automobile accident that occurred on January 14, 2019, involving defendant Giovanni R. Gurley (“Giovanni”). Giovanni alleges that she sustained serious bodily injuries as a result of the collision that occurred on January 14, 2019, that involved the vehicle that she, the insured, owned. Giovanni submitted claims to plaintiff, New York Central Mutual Fire Insurance Company (“NYCM”) for no-fault benefits under the insurance policy that plaintiff issued to the insured. Giovanni assigned the rights to collect no-fault benefits to co-defendants/medical providers. Plaintiff commenced an action on or about October 8, 2019, by a Summons and Complaint,

seeking a declaratory judgment against claimant as well as numerous co-defendants/medical providers under policy number 80155764, and plaintiff's claim number 2019-601772-0.

First, defendants AB MEDICAL SUPPLY, INC., BROOK CHIROPRACTIC OF NY, P.C., ENERGY CHIROPRACTIC, GC CHIROPRACTIC, P.C., NEW YORK CORE CHIROPRACTIC, P.C., and JULES FRANCOIS PARI SIEN, M.D., P.C., have answered the complaint (*see* NYSCEF doc nos 2, 6) (the "Answering Defendants"). Plaintiff does not move for default judgment against the answering defendants.

Plaintiff, NYCM, now moves for a default judgment pursuant to CPLR 3215 against the non-answering defendants, GIAVANNI R. GURLEY, RONNELL GURLEY, FRANK PICKENS, AK GLOBAL SUPPLY CORP., ATLAS PT, P.C., ATLAS RADIOLOGY, P.C., M BUSLON PHYSICAL THERAPY, P.C., COMPREHENSIVE PSYCHOLOGICAL EVAL, P.C., DOS MANOS CHIROPRACTIC, P.C., JIL ACUPUNCTURE, P.C., M&D ELITE PHARMACY, LLC., METROPOLITAN MEDICAL & SURGICAL, P.C., DR. OFFENBACHER MEDICAL IMAGING, PLLC, QUALITY CUSTOM MEDICAL SUPPLY, INC., M. EL SAYED PHYSICAL THERAPY, P.C., SHERMAN ABRAMS LABORATORY, INC., ZHONG QING ZHOU, LAC (hereinafter, "nonanswering defendants").

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 Giovanni R. Gurley's misrepresentations and false statements made when she obtained the auto policy of insurance with NYCM on January 8, 2019. Kavin Winton ("Winton"), an investigator in the Special Investigation Unit ("SIU") for NYCM, states in his affidavit that when Giovanni obtained the insurance policy on 1/8/19, she said she resided at 318 Lounsbury Avenue, Elmira, New York 14903. However, on 2/21/19, Winton went to that address, and saw a for-sale realty sign on the front law. No vehicle tracks were present. Recycle bins were still on

the front porch and empty. There was no answer when Winton rang the doorbell. After some research, Winton discovered that David Rosenthal was the owner of the property that Giavanni had listed on her insurance policy. Rosenthal gave testimony that he had no knowledge or connection to Giavanni, and never rented the house at 318 Lounsbury Avenue to her. Had plaintiff been aware of the false information, NYCM would not have issued the policy.

Accordingly, it is

**ORDERED** that plaintiff NYCM's motion for default judgment against defendants GIAVANNI R. GURLEY, RONNELL GURLEY, FRANK PICKENS, AK GLOBAL SUPPLY CORP., ATLAS PT, P.C., ATLAS RADIOLOGY, P.C., M BUSLON PHYSICAL THERAPY, P.C., COMPREHENSIVE PSYCHOLOGICAL EVAL, P.C., DOS MANOS CHIROPRACTIC, P.C., JIL ACUPUNCTURE, P.C., M&D ELITE PHARMACY, LLC., METROPOLITAN MEDICAL & SURGICAL, P.C., DR. OFFENBACHER MEDICAL IMAGING, PLLC, QUALITY CUSTOM MEDICAL SUPPLY, INC., M. EL SAYED PHYSICAL THERAPY, P.C., SHERMAN ABRAMS LABORATORY, INC., ZHONG QING ZHOU, LAC., is granted without opposition; and it is further

**ADJUDGED AND DECLARED** that defendant Giavanni R. Gurley is not eligible injured persons entitled to no-fault benefits under policy number 80155764, and plaintiff's claim number 2019-601772-0; and it is further

**ADJUDGED AND DECLARED** that defendants GIAVANNI R. GURLEY, RONNELL GURLEY, FRANK PICKENS, AK GLOBAL SUPPLY CORP., ATLAS PT, P.C., ATLAS RADIOLOGY, P.C., M BUSLON PHYSICAL THERAPY, P.C., COMPREHENSIVE PSYCHOLOGICAL EVAL, P.C., DOS MANOS CHIROPRACTIC, P.C., JIL ACUPUNCTURE, P.C., M&D ELITE PHARMACY, LLC., METROPOLITAN MEDICAL & SURGICAL, P.C., DR. OFFENBACHER MEDICAL IMAGING, PLLC, QUALITY CUSTOM MEDICAL SUPPLY, INC., M. EL SAYED PHYSICAL THERAPY, P.C., SHERMAN ABRAMS LABORATORY, INC., ZHONG

QING ZHOU, LAC., are not entitled to no-fault coverage for the motor vehicle accident that occurred on January 14, 2019, involving individual defendant Giovanni R. Gurley, for claims submitted under policy number 80155764, and plaintiff's claim number 2019-601772-0, as referenced in the complaint, and plaintiff NYCM 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 January 14, 2019 accident; and it is further

**ORDERED** that the remaining parties are directed to contact the court at mlivings@nycourts.gov to schedule a phone status conference. Please note that the parties should include all sides on the email, as the court does not accept ex parte communications.

DATED: 5/3, 2020  
New York, New York

ENTER:

  
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