

American Tr. Ins. Co. v All County LLC
2020 NY Slip Op 31566(U)
April 17, 2020
Supreme Court, New York County
Docket Number: 656574/2019
Judge: Debra A. James
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

ALL COUNTY LLC, BEST HANDS ON PHYSICAL THERAPY PC, BIG APPLE MED EQUIPMENT INC., COMFORT CHOICE CHIROPRACTIC PC, CONRAD F. CEAN MD, EAST SIDE PRIMARY MEDICAL CARE, P.C., ELMHURST FACULTY PRACTICE GROUP, ELMHURST HOSPITAL CENTER, ELMWOOD PARK MEDICAL GROUP PC, ENS MEDICAL, P.C., EXCELL CLINICAL LAB INC, FIFTH AVENUE SURGERY CENTER LLC, FLORAL PARK PHYSICAL THERAPY PC, HAMID LALANI MD, IGOR AMIGUD PHYSICIAN, PC, LIVING WATER ACUPUNCTURE, PC, MARK MCMAHON, MD, PC, MASPETH RX, INC, SJM ACUPUNCTURE, PC, METRO PAIN SPECIALISTS, P.C., NORTH SHORE UNIVERSITY HOSPITAL, NYH MED CENTER OF QUEENS, PDA NY CHIROPRACTIC, PC, PHOENIX MEDICAL SERVICES, PC, PRC SUPPLIES, INC, RADIOLOGY ASSOCIATES OF MAIN STREET, PC, SABAS NY SERVICES, INC, SINEW REHAB & WELLNESS CENTER, SJ ACUPUNCTURE PC, UNION DME CORP, UNITED PHYSICIANS PLLC and WOODHAVEN CHEMIST CORP,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 63 - 72 were read on this motion for JUDGMENT - DECLARATORY.

Upon the foregoing documents,

In this declaratory judgment action, plaintiff AMERICAN TRANSIT INSURANCE COMPANY moves for a default judgment for the relief demanded in the Complaint pursuant to CPLR 3215 based upon the failure of defendants ALL COUNTY LLC, BEST HANDS ON PHYSICAL THERAPY PC, COMFORT CHOICE CHIROPRACTIC PC, CONRAD F.

CEAN MD, EAST SIDE PRIMARY MEDICAL CARE, P.C., ELMHURST FACULTY PRACTICE GROUP, ELMHURST HOSPITAL CENTER, ELMWOOD PARK MEDICAL GROUP PC, EXCELL CLINICAL LAB INC, FIFTH AVENUE SURGERY CENTER LLC, FLORAL PARK PHYSICAL THERAPY PC, HAMID LALANI MD, IGOR AMIGUD PHYSICIAN, PC, LIVING WATER ACUPUNCTURE, PC, MARK MCMAHON, MD, PC, MASPETH RX, INC, SJM ACUPUNCTURE, PC, NORTH SHORE UNIVERSITY HOSPITAL, NYH MED CENTER OF QUEENS, PDA NY CHIROPRACTIC, PC, PHOENIX MEDICAL SERVICES, PC, PRC SUPPLIES, INC, RADIOLOGY ASSOCIATES OF MAIN STREET, PC, SINEW REHAB & WELLNESS CENTER and UNITED PHYSICIANS PLLC to answer or appear. A Stipulation of discontinuance resolves the action against defendant MARK MCMAHON, MD, PC.

Plaintiff has submitted proof of service of the summons and complaint and proof of service of this motion upon defendants. Plaintiff has further submitted an affidavit of facts pursuant to CPLR 3215 (f), as well as evidence of the default of non-answering defendants by attorney affirmation. This motion is brought within one year of the default. The court shall therefore grant a declaratory judgment on default against the defendants for the relief sought in the Complaint.

Accordingly, it is

ORDERED and ADJUDGED that plaintiff's motion for a default judgment against defendants ALL COUNTY LLC, BEST HANDS ON PHYSICAL THERAPY PC, COMFORT CHOICE CHIROPRACTIC PC, CONRAD F.

CEAN MD, EAST SIDE PRIMARY MEDICAL CARE, P.C., ELMHURST FACULTY PRACTICE GROUP, ELMHURST HOSPITAL CENTER, ELMWOOD PARK MEDICAL GROUP PC, EXCELL CLINICAL LAB INC, FIFTH AVENUE SURGERY CENTER LLC, FLORAL PARK PHYSICAL THERAPY PC, HAMID LALANI MD, IGOR AMIGUD PHYSICIAN, PC, LIVING WATER ACUPUNCTURE, PC, MARK MCMAHON, MD, PC, MASPETH RX, INC, SJM ACUPUNCTURE, PC, NORTH SHORE UNIVERSITY HOSPITAL, NYH MED CENTER OF QUEENS, PDA NY CHIROPRACTIC, PC, PHOENIX MEDICAL SERVICES, PC, PRC SUPPLIES, INC, RADIOLOGY ASSOCIATES OF MAIN STREET, PC, SINEW REHAB & WELLNESS CENTER and UNITED PHYSICIANS PLLC is GRANTED on default; and it is further

ORDERED, ADJUDGED and DECLARED that plaintiff AMERICAN TRANSIT INSURANCE COMPANY is not obligated to honor or pay claims for reimbursement as assignees of Marchela Etcheverry to ALL COUNTY LLC, BEST HANDS ON PHYSICAL THERAPY PC, COMFORT CHOICE CHIROPRACTIC PC, CONRAD F. CEAN MD, EAST SIDE PRIMARY MEDICAL CARE, P.C., ELMHURST FACULTY PRACTICE GROUP, ELMHURST HOSPITAL CENTER, ELMWOOD PARK MEDICAL GROUP PC, EXCELL CLINICAL LAB INC, FIFTH AVENUE SURGERY CENTER LLC, FLORAL PARK PHYSICAL THERAPY PC, HAMID LALANI MD, IGOR AMIGUD PHYSICIAN, PC, LIVING WATER ACUPUNCTURE, PC, MARK MCMAHON, MD, PC, MASPETH RX, INC, SJM ACUPUNCTURE, PC, NORTH SHORE UNIVERSITY HOSPITAL, NYH MED CENTER OF QUEENS, PDA NY CHIROPRACTIC, PC, PHOENIX MEDICAL SERVICES, PC, PRC SUPPLIES, INC, RADIOLOGY ASSOCIATES OF MAIN

STREET, PC, SINEW REHAB & WELLNESS CENTER and UNITED PHYSICIANS
PLLC and that the defaulting defendants have no rights to
litigate or arbitrate for No-Fault benefits with respect to the
November 24, 2018 alleged accident; and it if further

ORDERED that the remaining parties shall appear in IAS Part
59, 60 Centre Street, Room 331, New York, New York 10007, on
June 23, 2020, 9:30 AM for a preliminary conference.

<u>04/17/2020</u> DATE	<u><i>Debra A. James</i></u> DEBRA A. JAMES, J.S.C.			
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE