

Unitrin Direct Ins. Co. v Atlas PT, P.C.

2020 NY Slip Op 31576(U)

April 27, 2020

Supreme Court, New York County

Docket Number: 657345/2019

Judge: Nancy M. Bannon

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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INDEX NO. 657345/2019

UNITRIN DIRECT INSURANCE COMPANY,
Plaintiff,

MOTION DATE 03/06/2020

MOTION SEQ. NO. 001

- v -

ATLAS PT, P.C., BCJ MEDICAL P.C., FRONTLINE
FITTERS SURGICAL SUPPLY INC, HONG
ACUPUNCTURE P.C., M & D ELITE PHARMACY, LLC,
METROPOLITAN MEDICAL & SURGICAL P.C., NEW
MILLENNIUM MEDICAL IMAGING, P.C., RGW
CHIROPRACTIC DIAGNOSTICS P.C., RIDGEWOOD
DIAGNOSTIC LABORATORY, STAND UP MRI OF
BROOKLYN, P.C., WH MED EQUIPMENT INC., MICHELLE
WHITE and MARJORIE WHITE,

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 17, 18, 19, 20,
21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for JUDGMENT - DEFAULT

In this action, the plaintiff moves pursuant to CPLR 3215 for leave to enter a default
judgment against the defendants Michelle White and Marjorie White (the individual defendants)
and Atlas PT PC, BCJ Medical PC, Frontline Fitters Surgical Supply Inc., Hong Acupuncture
PC, M&D Elite Pharmacy LLC, Metropolitan Medical Surgical PC, New Millennium Medical
Imaging PC, RGW Chiropractic Diagnostics PC, Ridgewood Diagnostic Laboratory, Stand Up
MRI of Brooklyn PC, and WH Med Equipment Inc. (the non-answering health-care defendants),
declaring that it is not obligated to pay no-fault benefits to the non-answering health-care
defendants to reimburse them for treatment they rendered or medical equipment they provided
to the individual defendants for injuries allegedly sustained in an auto accident on November 14,
2018. The plaintiff moves for this relief on the grounds that individual defendants Marjorie White
and Metropolitan Medical Surgical PC failed to appear for duly scheduled Examinations Under
Oath (EUOs), and the plaintiffs' 'founded belief' that the injuries for which Michelle White sought
treatment did not arise from an insured event. The motion is granted inasmuch as the plaintiff
has submitted proof of service of the summons and complaint, proof of the facts constituting the

claim, and proof of the above defendants' failure to answer or appear. See CPLR 3215(f); Atlantic Cas. Ins. Co. v RJNJ Services, Inc., 89 AD3d 649 (2nd Dept. 2011).

In their applications for no-fault benefits, the individual defendants alleged, *inter alia*, that they were injured in a motor vehicle accident on November 14, 2018, and that they thereafter obtained medical treatment or medical supplies from the health-care defendants. According to the plaintiff, the health-care defendants sought payment under Claim Number A005898NY18, as assignees of the individual defendants, for no-fault benefits under insurance policy number 4173124. See Insurance Law 5106(a); 11 NYCRR 65-1.1. The plaintiff received a series of claims from the health- defendants from April 3, 2019 through July 2, 2019. The plaintiff mailed its first notice for an EUO to be held on July 29, 2019 to the individual defendants on July 15, 2019. The individual defendant care Marjorie White did not attend either the first EUO or the second rescheduled EUO on August 27, 2019.

The plaintiff's submissions demonstrate that the initial notice for an examination under oath (EUO) on July 15, 2019 was timely mailed to the individual defendants within 15 business days of its receipt of the health-care defendants' applicable NF-3 forms, as required by 11 NYCRR 65-3.5(b). See Kemper Independence Ins. Co. v Adelaida Physical Therapy, P.C., 147 AD3d 437 (1st Dept. 2017); National Liability & Fire Ins. Co. v Tam Med. Supply Corp., 131 AD3d 851 (1st Dept. 2015); American Tr. Ins. Co. v Jaga Med. Servs., P.C., 128 AD3d 441 (1st Dept. 2015). They also show that defendant Marjorie White did not appear for the initially scheduled EUO, and was provided timely notice of a rescheduled EUO, but failed to appear for that as well. The plaintiff consequently provided *prima facie* evidence that, by failing to appear, Marjorie White breached a condition precedent to the effectiveness of no-fault insurance coverage, thus vitiating that coverage. See Kemper Independence Ins. Co. v Adelaida Physical Therapy, P.C., *supra*; Hertz Corp. v Active Care Med. Supply Corp., 124 AD3d 411 (1st Dept. 2015); Allstate Ins. Co. v Pierre, 123 AD3d 618 (1st Dept. 2014). The plaintiffs submissions likewise demonstrate that health-care defendant Metropolitan Medical Surgical PC failed to appear for properly scheduled EUOs.

The plaintiffs also claims that it properly denied coverage on the subject claims on the basis that it has a "founded belief" that the injuries for which Michelle White sought treatment did not arise from an insured event, as they were not causally related to the alleged accident. See Central General Hosp. v Chubb Group of Ins. Cos., 90 NY2d 195 (1997); Zappone v Home Ins.

Co., 55 NY2d 131 (1982); Mount Sinai Hosp. v Triboro Council, 263 AD2d 11 (2nd Dept. 1999). The plaintiff's submissions support that determination. Indeed, the submissions indicate that the collision was an intentional, staged, event and not a covered accident. See Matter of Travelers Indemnity Co. v Cruz, 40 AD3d 362 (1st Dept. 2007); State Farm Mutual Automobile Ins. Co v LaGuerre, 305 AD2d 490 (2nd Dept. 2003). This determination was made based upon Michelle White's testimony at her EUO where she stated that the driver of the other vehicle in the accident was not injured, she was not in pain after the collision and told responding officers as much, declining medical treatment at the scene, and that an unknown person name "Oral" approached her and Marjorie White at the scene, identified himself as being affiliated with a tow-truck company, and recommended that they begin treatment at a specific clinic. She further states that despite not being in pain, she and Marjorie White got in his vehicle and were driven to a clinic where they received medical treatment. She also states after approximately two weeks, Oral contacted her and told her to begin treatment at a different clinic. The plaintiff describes this person as a "runner." These submissions support the plaintiff's "founded belief" that the injuries for which Michelle White sought treatment did not arise from their alleged accident. Furthermore, having failed to answer, the defendants are "deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them." Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 (2003).

Therefore, the plaintiff is entitled to a judgment declaring that the defendants are not entitled to no-fault benefits under article 51 of the Insurance Law for the subject accident and claims.

The court does not consider untimely submissions.

Accordingly, it is,

ORDERED that the plaintiff's motion for leave to enter a default judgment against Michelle White and Marjorie White (the individual defendants) and Atlas PT PC, BCJ Medical PC, Frontline Fitters Surgical Supply Inc., Hong Acupuncture PC, M&D Elite Pharmacy LLC, Metropolitan Medical Surgical PC, New Millennium Medical Imaging PC, RGW Chiropractic Diagnostics PC, Ridgewood Diagnostic Laboratory, Stand Up MRI of Brooklyn PC, and WH Med Equipment Inc. (the non-answering health-care defendants) is granted; and it is further,

ADJUDGED AND DECLARED that the plaintiff is not obligated to pay no-fault benefits to defendant Michelle White and Marjorie for injuries allegedly sustained in the motor vehicle accident on November 14, 2018, or to Atlas PT PC, BCJ Medical PC, Frontline Fitters Surgical Supply Inc., Hong Acupuncture PC, M&D Elite Pharmacy LLC, Metropolitan Medical Surgical PC, New Millennium Medical Imaging PC, RGW Chiropractic Diagnostics PC, Ridgewood Diagnostic Laboratory, Stand Up MRI of Brooklyn PC, and WH Med Equipment Inc. to reimburse them for treatment they rendered or medical equipment they provided to Michelle White or Marjorie White for injuries allegedly sustained in the motor vehicle accident on November 14, 2018, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

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| <u>4/27/2020</u> DATE | | | | | <hr/> NANCY M. BANNON, J.S.C. | | |
| CHECK ONE: | <input checked="" type="checkbox"/> | CASE DISPOSED | | <input type="checkbox"/> | NON-FINAL DISPOSITION | | |
| | <input checked="" type="checkbox"/> | GRANTED | <input type="checkbox"/> | DENIED | <input type="checkbox"/> | OTHER | |
| APPLICATION: | <input type="checkbox"/> | SETTLE ORDER | | <input type="checkbox"/> | SUBMIT ORDER | | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> | INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> | FIDUCIARY APPOINTMENT | <input type="checkbox"/> | REFERENCE |