

<b>Liberty Mut. Ins. Co. v Bennett</b>
2020 NY Slip Op 32662(U)
August 11, 2020
Supreme Court, New York County
Docket Number: 656335/2019
Judge: Louis L. Nock
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LOUIS L. NOCK PART IAS MOTION 38EFM**

*Justice*

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LIBERTY MUTUAL INSURANCE COMPANY and LM  
GENERAL INSURANCE COMPANY,

Plaintiffs,

INDEX NO. 656335/2019

MOTION DATE 04/16/2020

MOTION SEQ. NO. 001

- v -

GIOVANNI H. BENNETT, AURELIA OSBORN FOX  
MEMORIAL HOSPITAL SOCIETY, DAVID IGIANAN TOTAL  
WELLNESS AND MEDICAL HEALTH, ISLAND  
COMMUNITY ACUPUNCTURE, PC, MENDOZA  
CHIROPRACTIC OFFICE PC, NORTH SHORE - LONG  
ISLAND JEWISH MEDICAL CARE, PLLC, NORTH SHORE  
UNIVERSITY HOSPITAL, STAND-UP MRI OF CARLE  
PLACE, PC, THE MARY IMOGENE BASSETT HOSPITAL,  
TOTAL WELLNESS & MEDICAL HEALTH, PC, and  
UNIVERSITY PAIN MEDICINE CENTER, LLC,

Defendants.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10,  
11, 12, 13, 14, 15, 16

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, the motion of plaintiffs Liberty Mutual Insurance Company (“Liberty Mutual”) and LM General Insurance Company (together, “Plaintiffs”) for entry of a default judgment against defendants Giovanni H. Bennett (“Bennett”), Aurelia Osborn Fox Memorial Hospital Society, David Igianan Total Wellness and Medical Health, Island Community Acupuncture, PC, Mendoza Chiropractic Office PC, North Shore - Long Island Jewish Medical Care, PLLC, North Shore University Hospital, Stand-Up MRI of Carle Place, PC, The Mary Imogene Bassett Hospital, Total Wellness & Medical Health, PC, and University Pain Medicine Center, LLC (together, “Defendants”) is granted on default and without opposition.

Plaintiff is the issuer of an insurance policy issued to non-parties Geeta R. Ray (“Geeta”) and Rajaikant Ray under Policy No. AOS22113483270 (the “Policy”), under which Bennett made claims for no-fault benefits in connection with an alleged motor vehicle incident on February 14, 2019 (the “incident”), wherein a vehicle operated by Geeta allegedly struck Bennett at or near a parking spot. The remaining defendants are medical providers who have made claims to Plaintiffs as assignees of Bennett. On October 29, 2019, Plaintiffs commenced this action by filing a summons and complaint seeking declaratory and injunctive relief for present and future claims arising from the incident. All Defendants were served with process and none have answered or otherwise appeared in the action. Plaintiffs now move for entry of a default judgment against all Defendants.

A plaintiff that seeks entry of a default judgment for a defendant’s failure to answer must submit proof of service of the summons and complaint upon the defendant, proof of the facts constituting the claim, and proof of the defendant’s default (CPLR 3215[a], [f]). “The standard of proof is not stringent, amounting only to some firsthand confirmation of the facts” (*Feffer v Malpeso*, 210 AD2d 60, 61 [1st Dept 1994]). “[D]efaulters are deemed to have admitted all factual allegations contained in the complaint and all reasonable inferences that flow from them” (*Woodson v Mendon Leasing Corp.*, 100 NY2d 62, 71 [2003]). Nevertheless, “CPLR 3215 does not contemplate that default judgments are to be rubber-stamped once jurisdiction and a failure to appear have been shown. Some proof of liability is also required to satisfy the court as to the prima facie validity of the uncontested cause of action” (*Guzetti v City of New York*, 32 AD3d 234, 235 [1st Dept 2006] [internal quotations and citations omitted]).

Plaintiff has satisfied its burden on the motion by submitting an affirmation of its counsel, Geraldine Aine, Esq., and exhibits thereto, which demonstrate proof of service of the

summons and complaint on all Defendants and proof of default, and the affidavits of Elizabeth A. Czelowalnik, an investigator for Liberty Mutual, and Dawn Smith, Claims Department Team Manager for Liberty Mutual, which demonstrate proof of the facts constituting Plaintiffs' claims. The Czelowalnik affidavit sets forth the basis for the denial of coverage, as supported by the Examination Under Oath ("EUO") transcripts of both Geeta and Bennett that are annexed thereto. In her examination, Geeta testified that, on the day of the incident, she parked her car and was approached by Bennett, who shouted at her for taking his parking spot. Bennett then told her to move her car and threatened to call 911 and "put her in trouble" if she refused. He shouted at her and told her that he would report that she hit him if she did not move her car. Geeta adamantly denied that her vehicle hit Bennett and there was no damage to her vehicle. Bennett's examination testimony contained several inconsistencies regarding the incident, including testimony regarding movement of the car in which Bennett was traveling prior to the incident, Bennett's alleged injuries, and his representations that his pants were ripped but he did not know how it happened and that he did not remember prior automobile accidents in which he was involved in 2016, 2017, and 2018. Upon all of this evidence, Plaintiff reasonably concluded that Bennett was not struck by Geeta's vehicle and denied coverage. Plaintiffs' submission of the denial letters sent to Defendants demonstrates that it timely denied all claims submitted by the Defendants (NYSCEF Doc. No. 12). Upon all of these submissions, Plaintiffs have demonstrated their entitlement to a default judgment.

Accordingly, it is

ORDERED that the motion of plaintiffs Liberty Mutual Insurance Company and LM General Insurance Company for entry of a default judgment against defendants Giovanni H. Bennett, Aurelia Osborn Fox Memorial Hospital Society, David Igianan Total Wellness and

Medical Health, Island Community Acupuncture, PC, Mendoza Chiropractic Office PC, North Shore - Long Island Jewish Medical Care, PLLC, North Shore University Hospital, Stand-Up MRI of Carle Place, PC, The Mary Imogene Bassett Hospital, Total Wellness & Medical Health, PC, and University Pain Medicine Center, LLC is granted, and the Clerk of the Court is directed to enter judgment accordingly; and it is further

ADJUDGED and DECLARED that each and every part of any arbitration or court hearing brought by the defendants for no-fault benefits stemming from the alleged incident of February 14, 2019 is hereby permanently stayed; and it is further

ADJUGED and DECLARED that each of the defendants is hereby permanently enjoined from commencing or participating in any arbitration or court hearing for No-Fault benefits stemming from the alleged incident of February 14, 2019; and it is further

ADJUDGED and DECLARED that plaintiffs' denials of all claims for No-Fault benefits made by the defendants stemming from the alleged incident of February 14, 2019 are deemed valid.

This will constitute the decision and order of the court.

*Louis L. Nock*

<u>8/11/2020</u>			<u>LOUIS L. NOCK, J.S.C.</u>	
DATE				
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE