

|  |
|--|
| <b>General Ins. v Piquion</b>  |
| 2020 NY Slip Op 34508(U)   |
| February 26, 2020  |
| Supreme Court, Bronx County  |
| Docket Number: 22825/2020E   |
| Judge: Eddie J. McShan   |
| Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service. |
| This opinion is uncorrected and not selected for official publication.   |

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF BRONX: PART IA-32

THE GENERAL INSURANCE, PERMANENT GENERAL  
 ASSURANCE CORPORATION, PERMANENT GENERAL  
 ASSURANCE CORPORATION OF OHIO, THE GENERAL  
 AUTOMOBILE INSURANCE COMPANY, INC.,

*Plaintiffs,*

-against-

AYANNA PIQUION, BARBARA ALTIME, CAMILLE  
 DEROSE, CHEYENNE VAZQUEZ, CLYFFORD  
 MAURICE, DAVID BROWN, ERIQUE BERTRAND,  
 FARAH FELIX, FLIGHTDENICA PERARD, GREGORY  
 REMEDOR, JOHN FRANCOIS, JUNIOR BEAUZILE,  
 KINET DATILIEN, LORENZO DERBERRY, LOVENS  
 FONTILUS, MARIE SYLVERT, MIKE PIERRE-PAUL,  
 NASIA GASPARD, QUENCY NOEL, RAHEEM  
 GILLESPIE, RASHEKA BRYAN, RUYSS ST FLEURANT,  
 SACHA DESRAVINES, SADE LONG, SANDY CABA-  
 DURAN, SEAN CARY FRANCIS, STEEVE GUILLAUME,  
 TYREIK WILLIAMSON,  
 (collectively the "Policy Defendants")

-and-

ANASIA DESTINY SMITH, BETINA LAFORTUNE, BILLY  
 SMITH, CHEYENNE VAZQUEZ, CLAUDY BELLANGER,  
 DANA WHITE, DARRYN RIDDICK, DEJANE VERA,  
 DONALD DEBROSSE, DUANE BOUCHER, EL DORVILE,  
 ELIRUS WALTHUST, EMIYA TOLEDO, EVENSON  
 SOUVERAIN, FARAH FELIX, FRANCESCA SYLVERT,  
 FRANCKLIN ETIENNE, GUY JEAN-MICHEL, JAMES  
 ANDERSON, JAMES CLARKE, JAMES COLEMAN,  
 JAMES ELIASSAINT, JAMES JOSEPH, JAYDEN JULIEN,  
 JEAN DREGEN, JEAN-SAMSON ZAMOR, JOSEPH  
 BARKLEY, JOSEPH ROBERT, JOSEPH WILLIAMS,  
 JUNIOR GREEN KERVENS LEANDRE, KERVIN RAMEAU,  
 LAURA CELESTIN, LAWAN REESE, LEMAITRE VIDEAU,  
 LEONARDO BEAUVAIS, LEONIE TRENCH, MARCELINE  
 JULES, MARCO OREILLUS, MARIE ALTIME, MARIE  
 JEAN, MARK CHERY, MAYERLY MEJIAS, MEGAN  
 MATTIS, MIESHAWN MOORE, MIKERSON ELIASSAINT,  
 MILTON MARSHALL, MOSES FALL, NADEGE CANDIO,

**DECISION AND ORDER**

Index No. 22825/2020E

**Present:**

**HON. EDDIE J. MCSHAN**

O'NIEL PERRISSAINT, ORELIEN HUGGINS, PETER JACKSON, PIERRIE METIVIER, PRESUME VILLER, RANDY HONORA, RAYMOND COLETTI, REGINALD IRIZARRY, REGGIE ROB, RODNEY-PIERRE PAUL, ROODY VIDO, RUSLEE SMARTT, SERGE CASTOR, SHAKEIM PETERS, SHALA UDDIN, SHARON CARTER-ROSS, SHAWN WILLIAMS, RICKY DORVIL, SHAYLIA WALTON, SHAZI MARAV, STEVE JOHNSON, TAIHEEN SHULER, TAREK BECKLES

(collectively the "Staged Loss Defendants")

-and-

5 BOROUGH ANESTHESIA, PLLC, ACCESS CARE PT, P.C., ACTION CHIROPRACTIC, P.C., ACUCARE4U ACUPUNCTURE PLLC, AHMED ABDELAAL PT, DPT, ALL CITY FAMILY HEALTHCARE, ALTAI CORP. DBA GET READY MEDICAL SUPPLY, ANDREW J DOWD MD, ARD RX INC, ARISTA PHYSICAL THERAPY PC, ARON ROVNER MD, PLLC, ATLAS PHARMACY LLC, ATLAS RADIOLOGY, P.C., AVERROES PHYSICAL THERAPY PC, AXIAL CHIROPRACTIC, PC, BIG APPLE MED EQUIPMENT INC, BILLY H. FORD, MD PC, BROOKLYN MCDONALD MEDICAL CARE, PLLC, BURKE PHYSICAL THERAPY PC, CAVALLARO MEDICAL SUPPLY, CHI LEE ACUPUNCTURE PC, CHIROPRACTIC PAIN SOLUTIONS, P.C., CITY WIDE HEALTH FACILITY, INC, CLASS POINT ACUPUNCTURE, PLLC, CMA PSYCHOLOGY, P.C, COMPREHENSIVE PSYCHOLOGICAL PC, CONTEMPORARY DIAGNOSTIC IMAGING, CONTEMPORARY OTHOPEDICS, CORRECTALIGN CHIROPRACTIC PC, CUSTOM RX PHARMACY, DANIMARK PHYSICAL THERAPY PC, DELPHI CHIROPRACTIC PC, DIANA BEYNIN, DC, DNA PHARMACY INC, DOS MANOS CHIROPRACTIC PC, DR. OFFENBACHER MEDICAL IMAGING, PLLC, DR. S. MATRANGOLO, DC, DR. WATSON CHIROPRACTIC, PC, EAST 19 MEDICAL SUPPLY CORP., ENGLEWOOD ORTHOPEDICS GROUP PC, EZ ORTHO SUPPLY INC., FAIRPOINT ACUPUNCTURE PC, FLORID LEISURE ACUPUNCTURE P.C., FRANK ZHAN BEST PHYSICAL THERAPY, P.C., GC ACUPUNCTURE PC, GESHER PSYCHOLOGICAL SERVICES, P.C., GOOD SPACE ACUPUNCTURE P.C, HAZAQ PSYCHOLOGICAL SERVICES, P.C., HEALTH AND COMFORT RX, INC, HEALTH EAST MED ALLIANCE, HMP ORTHOPAEDICS,

HUDSON REGIONAL HOSPITAL, IGOR MAYZENBERG, LAC, JOHN LYONS MD, JOINT PHYSICAL THERAPY P C, JOSEPH A RAIA MD PC, JSJ ANESTHESIA PAIN MANAGEMENT PLLC, JULES F PARISIEN, KH LEE ACUPUNCTURE P C, KINGS COUNTY HOSPITAL, LINWOOD WEST MEDICAL, P.C., LONGEVITY MEDICAL SUPPLY, INC., LPM PHARMACY INC LR MEDICAL PLLC, M&D ELITE PHARMACY LLC, MACCABI PHARMACY RX INC, MALVINA DRUG CORP, LPM PHARMACY INC, MATTHEW HARLAN HOOVIS, MC PHYSICAL THERAPY, PC, MEDICAL PLAZA, METRO PAIN SPECIALISTS, PC, METROPOLITAN MEDICAL AND SURGICAL, P.C., MICHAEL B. GLISPY, MIDWOOD METROPOLITAN MEDICAL, P.C., MILL NECK CHIROPRACTIC, MIN PHYSICAL THERAPY P.C., MOLNAR MEDICAL SERVICES PC, MOTION MEDICAL DIAGNOSTICS, PC, MULTISPECIALTY HEALTH GROUP, NEW CAPITAL 1 INC., NEW MILLENNIUM MEDICAL IMAGING, P.C., NEW YORK CORE CHIROPRACTIC PC, NEW YORK INJURY CHIROPRACTIC REHAB PC, NEW YORK THERA PT PC, NEXRAY MEDICAL IMAGING PC, NOVA MEDICAL DIAGNOSTIC, P.C., NY BEST SUPPLY, INC, NYC CARE CHIROPRACTIC P C., NYC CARE PT, PC, NYWWQASC, LLC, OP ACUPUNCTURE, P.C., PERFORMANCE CHIRO, P.C., PONCE ACUPUNCTURE, P.C., PROTECHMED INC., QIXIA ACUPUNCTURE PC, RAF SPORTS CHIROPRACTIC PC, RAINE M PESIDAS PHYSICAL THERAPY PC, RANDALL ACUPUNCTURE P.C., REHAB TIME PT PC REHABILITATION MEDICAL CENTER, RENAN MACIAS MD, ROMEO MARIMAT PHYSICAL THERAPY, ROXBURY ANESTHESIA, LLC RUN HONG LI, SABAS NY SERVICES INC, SAFE ANESTHESIA AND PAIN, LLC, SCOB, LLC, SEAN L. THOMPSON, SEDATION VACATION, PERIOP MED PLLC, SHAMAYIM CHIROPRACTIC, P.C., SHASHEK CHIROPRACTIC PC, SKY RADIOLOGY, SOLID ROK PHYSICAL THERAPY, P.C, SONIA ARMENGÓL, MD, SORREL ACUPUNCTURE P.C., ST. KYROLLOS PHYSICAL THERAPY, P.C., STRAND PHARMACY D/B/A ASTORIA DRUGS, INC., STRUCTURAL SYNERGY PHYSICAL THERAPY, PC, SURGERY CENTER OF ORADELL, SURGICORE OF JERSEY CITY, LLC, TAI QI WELLNESS ACUPUNCTURE PC, TANUJ PALVIA, TIME TO CARE MEDICAL, P.C., TIME TO CARE PHARMACY INC, TOPLAB UNICAST INC, UNION DME, UNIVERSITY HOSPITAL OF BROOKLYN, WELLNESS DIAGNOSTIC IMAGING, PC, YELLOWSTONE MEDICAL REHAB P.C.

(collectively the "Provider Defendants")

*Defendants.*

---

The following e-filed documents, listed on NYSCEF as document numbers 62, 63, 64, 65, 66, 67 (Motion Seq. #003) were read on this motion for preliminary injunction.

---

Upon the foregoing cited papers, the Decision and Order on this Order to Show Cause is as follows:

Before this Court is plaintiffs' motion seeking a preliminary injunction against defendants HMP Orthopaedics, P.C.; Sedation Vacation Perioperative Medicine, PLLC; and Good Life Acupuncture, P.C. (hereinafter "Subject Defendants") (1) staying all further proceedings in any pending court actions and arbitrations brought by them against plaintiffs; (2) enjoining them from commencing or continuing to prosecute any court or arbitration proceeding against plaintiffs seeking reimbursement health service benefits rendered pursuant to New York State Comprehensive Motor Vehicle Insurance Reparations Law, i.e. Insurance Law §§ 5101 et seq; and (3) enjoining them from submitting no-fault bills to plaintiffs pending the determination of the instant action. The Court takes notice that defendant Good life Acupuncture, P.C. entered into a Stipulation so-ordered on January 27, 2021 with plaintiffs agreeing to stay arbitration 41-19-1137-4525 filed with the American Arbitration Association pending the final resolution of instant action. The remaining Subject Defendants did not oppose plaintiffs' application. Accordingly, the Court determines plaintiffs' application as against defendants HMP Orthopaedics, P.C. and Sedation Vacation Perioperative Medicine, PLLC as follows.

Background

On February 14, 2020, the plaintiffs commenced this declaratory judgment pursuant to CPLR § 3001 against the defendants. Plaintiffs effectuated service upon the Subject Defendants on July 1, 2020 by delivering the summons, verified complaint, verification notice pursuant to CPLR 3215(g)(4)(i) upon Colleen Bahahan, an authorized agent in the office of the Secretary of the State of New York (NYSCEF # 67). To date, none of the Subject Defendants, except Good

Life Acupuncture, P.C., have filed answers in the instant action. Plaintiffs served the remaining Subject Defendants HMP Orthopaedics (NYSCEF #191) and Sedation Vacation Perioperative Medicine, PLLC (NYSCEF # 232) with the instant application.

### Injunctive Relief

Plaintiffs indicate that they issued a motor vehicle policy to policy defendant Rasheka Bryan on inception date of July 26, 2018. Plaintiffs suggest that Ms. Bryan was involved in a staged accident scheme on August 27, 2018 (Claim #: PA0002370845). Plaintiffs indicate that the named defendants from this staged accident received treatment from the Subject Defendants HMP Orthopaedics, PC and Sedation Vacation Perioperative Medicine, PLLC, which submitted billing to plaintiffs to recover no-fault benefits under the policy for the treatments allegedly provided to the claimants. Plaintiffs assert that Ms. Bryan's policy and claim in question have clear links to other policies and claims involved in the staged accident scheme. Plaintiffs assert that Ms. Bryan procured the insurance policy by fraud and/or by materially misrepresenting her actual address.

Plaintiffs argue that injunctive relief is appropriate because the policy defendant Ms. Bryan fraudulently procured an automobile insurance policy from the plaintiffs, staged a phony automobile "accident" for which policy defendants sought treatments from the remaining Subject Defendants for alleged "injuries" they never sustained. Plaintiffs insist that various policy defendants, including Ms. Bryan, have made numerous claims against policies written by the plaintiffs which have been determined to be intentional incidents not eligible for no-fault benefits due to fraud. Plaintiffs details an extensive list of common variables among the fraudulent claims including that of Ms. Bryan. Plaintiffs emphasize that deliberate, staged collisions are not covered accidents under the plaintiffs' issued policies and do not, as a matter of law, trigger an obligation by an insurer to afford coverage in accordance with N.Y. Ins. Law § 403 or 11 N.Y.C.R.R. § 65-1.1.

Plaintiffs further argue that if injunctive relief is not granted, they will have to separately litigate the currently pending and future claims for no-fault benefits from the remaining Subject

Defendants while this declaratory judgment action is pending. In addition to possibly inconsistent holdings, plaintiffs insist that they would suffer significant injury including, but not limited to, loss of time, resources, funds and unrecoverable costs and fees if forced to litigate separately. Plaintiffs insist that a balancing of the equities favors granting the requested injunctive relief.

It is well-settled that an application for a preliminary injunction requires a party to show “(1) the likelihood of success on the merits; (2) irreparable injury absent granting the preliminary injunction; and (3) a balancing of the equities” (*see for example W. T. Grant Co. v Srogi*, 52 NY2d 496 [1981]). “As a general rule, the decision to grant or deny a preliminary injunction lies within the sound discretion of the Supreme Court” (*see Cong. Machon Chana v machon Chana Women's Inst., Inc.* 162 AD3d 635 [2<sup>nd</sup> Dept 2018]).

In the instant matter, the Court finds that the plaintiffs made a *prima facie* showing of entitlement to a preliminary injunction. The plaintiffs met the reduced standard for likelihood of success on the merits by showing that the Subject Defendants failed to appear in this action, and the policy defendants did not appear for the required examinations under oath (“EUO”) which allows plaintiffs to deny claims. In addition, plaintiffs indicated that the staged accidents as alleged do not, as a matter of law, obligate coverage.

The Court also finds that plaintiffs established the irreparable harm requirement inasmuch as defending and prosecuting claims with common issues of law and fact would result in unnecessary loss of time, resources, and funds that would be unrecoverable if forced to litigate separately. As such, the balance of the equities favors the granting of the preliminary injunctive relief pending the resolution of the instant action.

Accordingly, the Court grants plaintiffs’ application for a preliminary injunction on default as against defendants HMP Orthopaedics, PC and Sedation Vacation Perioperative Medicine, PLLC (Claim # PA000237045) insofar as it (1) stays all further proceedings in any pending court actions and arbitrations brought by them against plaintiffs; (2) enjoins them from

commencing or continuing to prosecute any court or arbitration proceeding against plaintiffs seeking reimbursement health service benefits rendered pursuant to New York State Comprehensive Motor Vehicle Insurance Reparations Law, i.e. Insurance Law §§ 5101 et seq; and (3) enjoins them from submitting no-fault bills to plaintiffs pending the determination of the instant action.

In light of the foregoing, it is hereby

**ORDERED AND ADJUDGED** that plaintiffs' application seeking a preliminary injunction against defendants is granted in accordance with the Court's findings hereinabove and in accordance with the so-ordered Stipulation dated January 27, 2021.

This shall constitute the decision and order of the Court.

Dated: February 26, 2020



---

**Hon. Eddie J. McShan**