

<b>Country-Wide Ins. Co., v Peters</b>
2021 NY Slip Op 30948(U)
March 24, 2021
Supreme Court, New York County
Docket Number: 653287/2020
Judge: Arthur F. Engoron
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
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART IAS MOTION 37EFM

Justice

-----X

COUNTRY-WIDE INSURANCE COMPANY,
Plaintiff,

INDEX NO. 653287/2020
MOTION DATE 01/19/2021
MOTION SEQ. NO. 001

- v -

KIMANI PETERS, HEALTHWAY MEDICAL CARE
P.C., ACUPUNCTURE NOW P.C., NORTHEAST
ANESTHESIA, P.C., JULES FRANCOIS PARISIEN,
ORTHOCARETECH INC., APPLE PAIN MANAGEMENT,
P.L.L.C., PDA NY CHIROPRACTIC, P.C., HEALTHWISE
MEDICAL SERVICES P.C., PROTECHMED INC, BLISS
DRUGS INC., ADVANTAGE MED INNOVATIONS, INC,
SPINE CARE CHIROPRACTIC, P.C., M EL SAYED
PHYSICAL THERAPY, P.C., SEDATION VACATION
PERIOPERATIVE MEDICINE PLLC, MFS SUPPLY CORP,
STEPHENS ACUPUNCTURE P.C., MEDAID RADIOLOGY
LLC, ELEYINAFE MEDICAL CARE P.C., DAVID ISRAEL,
M.D., UNICAST, INC, ALEMAN CHIROPRACTIC
SERVICES, P.C., SUPPORTIVE PRODUCTS CORP, DEO
MEDICAL SERVICES P.C., PRO BALANCE
ACUPUNCTURE, P.C., ASC OF ROCKAWAY BEACH, LLC

DECISION + ORDER ON
MOTION

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 54

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents and for the reasons set forth hereinbelow, the instant motion by plaintiff, Country-Wide Insurance Company, pursuant to CPLR 3215, for a declaratory judgment on default is granted, on the merits and on default, as against certain defendants and is denied, without prejudice solely as moot, as against another defendant.

Background

On March 18, 2019, the claimant-defendant, Kimani Peters, was allegedly injured in a motor vehicle accident and notified plaintiff, Country-Wide Insurance Company. The claimant-defendant apparently sought medical treatment and/or services from the medical provider defendants, namely, Healthway Medical Care P.C.; Acupuncture Now, P.C.; Northeast Anesthesia P.C.; Jules Francois Parisien; Orthocaretech Inc.; Apple Pain Management, P.L.L.C.; PDA NY Chiropractic, P.C.; Healthwise Medical Services, P.C.; Protechmed Inc; Bliss Drugs Inc.; Advantage Med Innovations, Inc; Spine Care Chiropractic, P.C.; M El Sayed Physical

Therapy, P.C.; Sedation Vacation Perioperative Medicine PLLC; MFS Supply Corp; Stephens Acupuncture, P.C.; Medaid Radiology LLC; Eleyinafe Medical Care P.C.; David Israel, MD; Unicast Inc; Aleman Chiropractic Services, P.C.; Supportive Products Corp; Deo Medical Services, P.C.; Pro Balance Acupuncture, P.C.; and ASC of Rockaway Beach, LLC. The claimant-defendant assigned his/her right to collect No-Fault benefits to the medical provider defendants, which submitted No-Fault claims to plaintiff, seeking reimbursement for medical services that they allegedly provided to the claimant-defendant for injuries allegedly arising out of the subject alleged accident. On June 27 and August 15, 2019, the claimant-defendant failed to appear for a scheduled and rescheduled Independent Medical Examination (“IME”). Thus, plaintiff disclaimed coverage. (NYSCEF Doc. 1.)

On July 14, 2020, plaintiff commenced the instant action against defendants, seeking a judgment (1) declaring that plaintiff owes no duty to defendants to pay No-Fault claims to defendants arising out of the subject alleged accident; (2) permanently staying all No-Fault lawsuits and arbitrations arising from the No-Fault claims, arising out of the subject alleged accident, that defendants submitted to plaintiff; and (3) awarding costs, disbursements, and attorney’s fees to plaintiff (NYSCEF Doc. 1, at 17).

On September 11, 2020, medical provider defendant Spine Care Chiropractic, PC answered the instant complaint with various admissions, denials, and nine Affirmative Defenses (NYSCEF Doc. 26).

On September 14, 2020, medical provider defendants Healthway Medical Care, P.C.; Acupuncture Now, P.C.; Jules Francois Parisien; PDA NY Chiropractic P.C.; Spine Care Chiropractic, P.C.; Stephens Acupuncture, P.C.; and Medaid Radiology LLC answered the instant complaint with various admissions, denials, and forty Affirmative Defenses (NYSCEF Doc. 29).

On October 30, 2020, medical provider defendant Advantage Med Innovations, Inc. answered the instant complaint with various admissions, denials, twenty-four Affirmative Defenses, and a counter-claim (NYSCEF Doc. 32).

Plaintiff now moves, pursuant to CPLR 3215, for a declaratory judgment on default as against the claimant defendant and medical provider defendants Acupuncture Now, P.C.; Northeast Anesthesia P.C.; Orthocaretech Inc.; Apple Pain Management, P.L.L.C.; Healthwise Medical Services, P.C.; Protechmed Inc; Bliss Drugs Inc.; M El Sayed Physical Therapy, P.C.; Sedation Vacation Perioperative Medicine PLLC; MFS Supply Corp; Eleyinafe Medical Care P.C.; Unicast Inc; Aleman Chiropractic Services, P.C.; Supportive Products Corp; Deo Medical Services, P.C.; Pro Balance Acupuncture, P.C.; and ASC of Rockaway Beach, LLC, only (NYSCEF Doc. 34).

On December 1, 2020, medical provider defendant Healthwise Medical Services, P.C. answered the instant complaint with various admissions, denials, and twenty-four Affirmative Defenses (NYSCEF Doc. 51).

Pursuant to a January 12, 2021 stipulation, plaintiff withdrew the instant motion for a declaratory judgment on default as against medical provider defendant, Acupuncture Now, P.C., only (NYSCEF Doc. 54).

### Discussion

Plaintiff has established that it is entitled to a declaratory judgment on default as against the claimant-defendant and medical provider defendants Northeast Anesthesia P.C.; Orthocaretech Inc.; Apple Pain Management, P.L.L.C.; Healthwise Medical Services, P.C.; Protechmed Inc; Bliss Drugs Inc.; M El Sayed Physical Therapy, P.C.; Sedation Vacation Perioperative Medicine PLLC; MFS Supply Corp; Eleyinafe Medical Care P.C.; Unicast Inc; Aleman Chiropractic Services, P.C.; Supportive Products Corp; Deo Medical Services, P.C.; Pro Balance Acupuncture, P.C.; and ASC of Rockaway Beach, LLC (collectively, “the defaulting defendants”) by complying with CPLR 3215(f) and (g) by submitting, inter alia, the following: copies of the subject summons and verified complaint (NYSCEF Doc. 36); the subject affidavits of service and CPLR 3215(g) notices (NYSCEF Documents 37 and 38); the November 18, 2020 affidavit of facts of Kyaw Nyein, a No-Fault Claim Supervisor for plaintiff (NYSCEF Doc. 42); and the November 23, 2020 affirmation of Carl J. Gedeon, Esq., plaintiff’s attorney (NYSCEF Doc. 35).

To date, the defaulting defendants have failed to answer the instant complaint timely and/or oppose the instant motion, and their time to do so has expired. Plaintiff is entitled to a declaratory judgment on default as against the defaulting defendants.

### Conclusion

Thus, for the reasons stated hereinabove, the instant motion, pursuant to CPLR 3215, by plaintiff, Country-Wide Insurance Company, for a declaratory judgment on default is hereby (1) granted, on the merits and on default, as against the claimant-defendant, Kimani Peters, and medical provider defendants Northeast Anesthesia P.C.; Orthocaretech Inc.; Apple Pain Management, P.L.L.C.; Healthwise Medical Services, P.C.; Protechmed Inc; Bliss Drugs Inc.; M El Sayed Physical Therapy, P.C.; Sedation Vacation Perioperative Medicine PLLC; MFS Supply Corp; Eleyinafe Medical Care P.C.; Unicast Inc; Aleman Chiropractic Services, P.C.; Supportive Products Corp; Deo Medical Services, P.C.; Pro Balance Acupuncture, P.C.; and ASC of Rockaway Beach, LLC; and (2) denied, without prejudice solely as moot, as against medical provider defendant Acupuncture Now, P.C., pursuant to the January 12, 2021 stipulation (NYSCEF Doc. 54) withdrawing the instant motion as against that medical provider defendant. Accordingly, the Clerk is hereby directed to enter judgment (1) declaring that plaintiff owes no duty to the claimant-defendant, Kimani Peters, and medical provider defendants Northeast Anesthesia P.C.; Orthocaretech Inc.; Apple Pain Management, P.L.L.C.; Healthwise Medical Services, P.C.; Protechmed Inc; Bliss Drugs Inc.; M El Sayed Physical Therapy, P.C.; Sedation Vacation Perioperative Medicine PLLC; MFS Supply Corp; Eleyinafe Medical Care P.C.; Unicast Inc; Aleman Chiropractic Services, P.C.; Supportive Products Corp; Deo Medical Services, P.C.; Pro Balance Acupuncture, P.C.; and ASC of Rockaway Beach, LLC, to pay No-Fault claims arising out of the alleged March 18, 2019 accident to the immediately aforementioned defendants; (2) permanently staying all No-Fault lawsuit and arbitrations arising from the No-Fault claims that the claimant-defendant, Kimani Peters, and medical provider defendants Northeast Anesthesia P.C.; Orthocaretech Inc.; Apple Pain Management, P.L.L.C.;

Healthwise Medical Services, P.C.; Protechmed Inc; Bliss Drugs Inc.; M El Sayed Physical Therapy, P.C.; Sedation Vacation Perioperative Medicine PLLC; MFS Supply Corp; Eleyinafe Medical Care P.C.; Unicast Inc; Aleman Chiropractic Services, P.C.; Supportive Products Corp; Deo Medical Services, P.C.; Pro Balance Acupuncture, P.C.; and ASC of Rockaway Beach, LLC submitted to plaintiff arising out of the alleged March 18, 2019 accident; and (3) awarding costs and disbursements to plaintiff.

The Court requests that, if appropriate, plaintiff and medical provider defendant Acupuncture Now, P.C. please contact our part clerk, Margie Ramos-Ciancio, via email at [mciancio@nycourts.gov](mailto:mciancio@nycourts.gov) to schedule a preliminary conference, remembering to copy all remaining parties.



20210324125847AENGORONEEF5ADA908D54528B89C2D444E00615E

3/24/2021  
DATE

ARTHUR F. ENGORON, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE