

<b>Country-Wide Ins. Co. v Smoot</b>
2021 NY Slip Op 30954(U)
March 25, 2021
Supreme Court, New York County
Docket Number: 656107/2019
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*

-----X  
COUNTRY-WIDE INSURANCE COMPANY,  
  
Plaintiff,

INDEX NO. 656107/2019  
MOTION DATE 10/08/2020  
MOTION SEQ. NO. 001

- v -

JOSHUA SMOOT, ANDREW J. DOWD, M.D.,  
METROPOLITAN MEDICAL AND SURGICAL,  
P.C., INTEGRATED PAIN MANAGEMENT, PLLC, PDA NY  
CHIROPRACTIC, P.C., HEALTHWISE MEDICAL SERVICES  
P.C., BLISS DRUGS INC., M & D ELITE PHARMACY,  
LLC, CMA PSYCHOLOGY, P.C., M EL SAYED PHYSICAL  
THERAPY, P.C., DOS MANOS CHIROPRACTIC P.C., MFS  
SUPPLY CORP, STEPHENS ACUPUNCTURE  
P.C., MEDAID RADIOLOGY, LLC, CONFIDENT MEDICAL  
ASRVICES PC, MAX JEAN GILLES MD

**DECISION + ORDER ON  
MOTION**

Defendant.

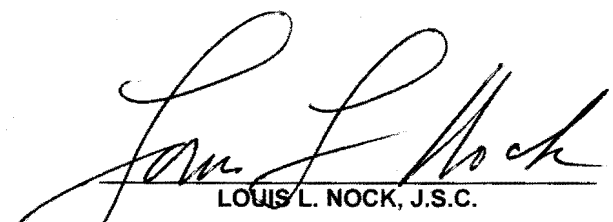
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The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42

were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents, the motion of plaintiff for entry of a default judgment is granted to the extent set forth in the accompanying Order and Judgment.

3/25/2021  
DATE

  
LOUIS L. NOCK, 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"/>	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"/>	REFERENCE
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT

File No.: 19CW1005311/000342520-003  
SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
COUNTRY-WIDE INSURANCE COMPANY

Index No.: 656107/2019

Plaintiff,

- against -

JUDGMENT

JOSHUA SMOOT

("Eligible Injured Party Defendant"),

And

ANDREW J. DOWD, M.D.,  
METROPOLITAN MEDICAL AND SURGICAL, P.C.,  
INTEGRATED PAIN MANAGEMENT, PLLC,  
PDA NY CHIROPRACTIC, P.C.,  
HEALTHWISE MEDICAL SERVICES P.C.,  
BLISS DRUGS INC.,  
M & D ELITE PHARMACY, LLC,  
CMA PSYCHOLOGY, P.C.,  
M EL SAYED PHYSICAL THERAPY, P.C.,  
DOS MANOS CHIROPRACTIC P.C.,  
MFS SUPPLY CORP,  
STEPHENS ACUPUNCTURE P.C.,  
MEDAID RADIOLOGY, LLC,  
CONFIDENT MEDICAL ASRVICES PC,  
MAX JEAN GILLES MD

(" Medical Provider Defendants").

Defendant(s).

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HON. **HON. LOUIS L. NOCK**, J.S.C.  
J.S.C.

This case arises from an automobile accident on February 4, 2019 where defendant JOSHUA SMOOT was involved in a motor vehicle accident while allegedly in a vehicle insured

by plaintiff, Country-Wide Insurance Company ("Plaintiff"). Defendant made a claim to Plaintiff as a purported injured person under as insurance policy issued by Plaintiff ( RS 8154771 18 ).

Plaintiff commenced an action on or about October 18, 2019, by the filing of a Summons and Complaint seeking a declaratory judgment against JOSHUA SMOOT, ANDREW J. DOWD, M.D., METROPOLITAN MEDICAL AND SURGICAL, P.C., INTEGRATED PAIN MANAGEMENT, PLLC, PDA NY CHIROPRACTIC, P.C., HEALTHWISE MEDICAL SERVICES P.C., BLISS DRUGS INC., M & D ELITE PHARMACY, LLC, CMA PSYCHOLOGY, P.C., M EL SAYED PHYSICAL THERAPY, P.C., DOS MANOS CHIROPRACTIC P.C., MFS SUPPLY CORP, STEPHENS ACUPUNCTURE P.C., MEDAID RADIOLOGY, LLC, CONFIDENT MEDICAL ASRVICES PC, and MAX JEAN GILLES MD, due to the alleged breach of contract by JOSHUA SMOOT in failing to appear for a properly requested and scheduled Examination Under Oath. Plaintiff seeks a declaration that JOSHUA SMOOT is not an eligible injured person entitled to no-fault benefits under the Policy, and that Plaintiff is not obligated to reimburse JOSHUA SMOOT for alleged medical treatment, therapy and/or medical supplies rendered.

Plaintiff now moves for a default judgment pursuant to CPLR § 3215 against, JOSHUA SMOOT, METROPOLITAN MEDICAL AND SURGICAL, P.C., PDA NY CHIROPRACTIC, P.C., M & D ELITE PHARMACY, LLC, CMA PSYCHOLOGY, P.C., M EL SAYED PHYSICAL THERAPY, P.C., MFS SUPPLY CORP, STEPHENS ACUPUNCTURE P.C., MEDAID RADIOLOGY, LLC, MAX JEAN GILLES MD, CONFIDENT MEDICAL ASRVICES PC. No opposition is submitted.

Plaintiff submits affidavits of service showing service upon JOSHUA SMOOT on November 4, 2019 and the Medical Provider Defendants on October 25, 2019, December 4, 2019,

January 23, 2020, and August 17, 2020. Plaintiff submits the affidavit of Jessica Mena-Sibrian, who is employed as a No-fault litigation/Arbitration Supervisor and the affidavit of Annie Persaud, the EUO Clerk at Country-Wide Insurance Company, in support of Plaintiff's motion for default judgment.

**WHEREFORE**, it is hereby,

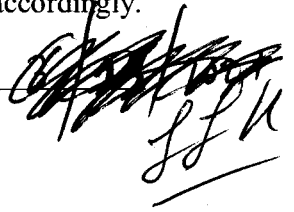
**ORDERED** that Plaintiff's motion for default judgment against, JOSHUA SMOOT, METROPOLITAN MEDICAL AND SURGICAL, P.C., PDA NY CHIROPRACTIC, P.C., M & D ELITE PHARMACY, LLC, CMA PSYCHOLOGY, P.C., M EL SAYED PHYSICAL THERAPY, P.C., MFS SUPPLY CORP, STEPHENS ACUPUNCTURE P.C., MEDAID RADIOLOGY, LLC, MAX JEAN GILLES MD, CONFIDENT MEDICAL ASRVICES PC, is granted; and it is further,

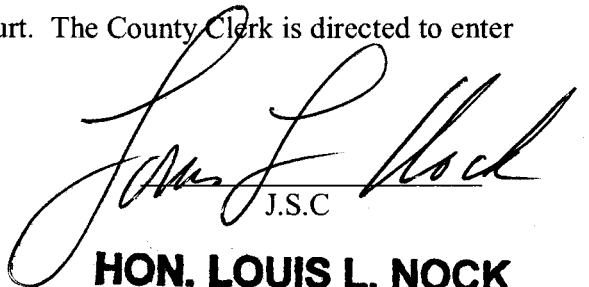
**ORDERED and ADJUDGED** that on the first cause of action Plaintiff owes no duty to Defendants, JOSHUA SMOOT, METROPOLITAN MEDICAL AND SURGICAL, P.C., PDA NY CHIROPRACTIC, P.C., M & D ELITE PHARMACY, LLC, CMA PSYCHOLOGY, P.C., M EL SAYED PHYSICAL THERAPY, P.C., MFS SUPPLY CORP, STEPHENS ACUPUNCTURE P.C., MEDAID RADIOLOGY, LLC, MAX JEAN GILLES MD, CONFIDENT MEDICAL ASRVICES PC, to pay No-Fault claims submitted in relation to the February 4, 2019 loss, Claim No.: 000342520-003, Policy.: RS 8154771 18, referenced in the complaint involving JOSHUA SMOOT, and it is further,

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**ORDERED and ADJUDGED** that on the second cause of action that all arbitrations, lawsuits and enforcement of awards or judgments in connection with the February 4, 2019 loss, Claim No.: 000342520-003, Policy.: RS 8154771 18, referenced in the complaint involving JOSHUA SMOOT are hereby permanently stayed.

This constitutes the decision and order of the court. The County Clerk is directed to enter Judgment accordingly.

Dated:  LLU

  
J.S.C.  
**HON. LOUIS L. NOCK**  
J.S.C.

Mar. 25, 2021  
LLU