

Country-Wide Ins. Co. v Velez
2021 NY Slip Op 32343(U)
November 15, 2021
Supreme Court, New York County
Docket Number: Index No. 652568/2021
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

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COUNTRY-WIDE INSURANCE COMPANY,
Plaintiff,

INDEX NO. 652568/2021

MOTION DATE 10/05/2021

MOTION SEQ. NO. 001

- v -

MICHAEL VELEZ, LONG ISLAND JEWISH MEDICAL CENTER, HILLSIDE FAMILY CHIROPRACTIC, P.C., NORTH SHORE LIJ MEDICAL, P.C., GARA MEDICAL CARE, P.C., ATLAS RADIOLOGY, P.C., SANFORD CHIROPRACTIC, P.C., SKY LINE PHYSICAL THERAPY, P.C., DOS MANOS CHIROPRACTIC, P.C., UNION DME CORP., AFFINITY RX, WELLNESS PHYSICAL THERAPY REHABILITATION, PLLC, ACU NEEDLE ACUPUNCTURE, P.C., CROSSTOWN CHIROPRACTIC, P.C., JA PHYSICAL THERAPY, P.C.

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38

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

Upon the foregoing documents, it is

This case arises from an alleged automobile accident on May 13, 2019 where defendant Ming Jun Fu was in a vehicle insured by plaintiff, Country-Wide Insurance Company (“Country-Wide”). Defendant made a claim (claim number 000344672-001) to plaintiff as a purported injured person under an insurance policy issued by plaintiff (RS 8159606 18).

Plaintiff filed affidavits of service of the summons and complaint upon named defendants on April 26, 2021 (see NYSCEF Doc. Nos. 2 – 4, 6 – 15, 17). The complaint seeks a declaratory judgment against MICHAEL VELEZ, LONG ISLAND JEWISH MEDICAL CENTER, HILLSIDE FAMILY CHIROPRACTIC PC, NORTH SHORE LIJ MEDICAL PC, GARA MEDICAL CARE PC, ATLAS RADIOLOGY PC, SANFORD CHIROPRACTIC PC, SKY

LINE PHYSICAL THERAPY PC, DOS MANOS CHIROPRACTIC PC, UNION DME CORP, AFFINITY RX, WELLNESS PHYSICAL THERAPY REHABILITATION PLLC, ACU NEEDLE ACUPUNCTURE PC, CROSSTOWN CHIROPRACTIC PC, and JA PHYSICAL THERAPY PC that Michael Velez is not an eligible injured person entitled to no-fault benefits under the insurance policy, and that plaintiff is not obligated to reimburse Michael Velez for alleged medical treatment, therapy and/or medical supplies rendered. Plaintiff alleges Michael Velez breached the policy in failing to appear for a properly requested and scheduled Independent Medical Examination (“IME”).

Plaintiff now moves for a default judgment, CPLR 3215 against MICHAEL VELEZ, LONG ISLAND JEWISH MEDICAL CENTER, HILLSIDE FAMILY CHIROPRACTIC PC, NORTH SHORE LIJ MEDICAL PC, GARA MEDICAL CARE PC, ATLAS RADIOLOGY PC, SANFORD CHIROPRACTIC PC, SKY LINE PHYSICAL THERAPY PC, DOS MANOS CHIROPRACTIC PC, UNION DME CORP, AFFINITY RX, WELLNESS PHYSICAL THERAPY REHABILITATION PLLC, ACU NEEDLE ACUPUNCTURE PC, CROSSTOWN CHIROPRACTIC PC, and JA PHYSICAL THERAPY PC.

An affidavit of service for additional notice, per CPLR 3215(g) has been submitted for all defendants except MICHAEL VELEZ (see NYSCEF Doc. No. 18 P. 23). An affidavit of service of the notice of motion for all defendants has been provided (see NYSCEF Doc. No. 38 P. 1).

Defendants have not appeared nor submitted opposition to the instant motion.

An insurer may request that an eligible injured party appear for an IME to verify the no-fault claim and deny no-fault benefits if the eligible injured party fails to appear. Compliance with an IME request is a condition precedent for no-fault coverage (see 11 NYCRR 65-1.1, 65-3.5(e)).

The affidavit of Kyaw Nyein, no-fault claim supervisor for Country-Wide affirms, “[p]laintiff requested that the eligible injured party submit to two (2) scheduled IME’s, to which the eligible injured party failed to appear. Plaintiff requested that the eligible injured party appear for the IME on August 15, 2019. On August 15, 2019, however, the eligible injured party failed to appear for the IME. A final notice for the IME was sent to the eligible injured party’s attorney and the eligible injured party, scheduling the IME for October 03, 2019. On October 03, 2019, the eligible injured party failed to appear for the second time” (see NYSCEF Doc. No. 30 Par. 10).

A violation of a condition precedent of not appearing for IME’s absolves the insurance company’s obligation from paying any amount in dispute that may have arisen under the contract (see *Dyno-Bite*, 80 A.D.2d 471 [2d Dep’t 2006]).


Wherefore, it is hereby,

ORDERED that plaintiff’s motion for a default judgment, CPLR 3215, against MICHAEL VELEZ is DENIED for non-compliance of the additional notice requirement of CPLR 3215(g); and it is further

ORDERED that plaintiff’s motion for a default judgment against LONG ISLAND JEWISH MEDICAL CENTER, HILLSIDE FAMILY CHIROPRACTIC PC, NORTH SHORE LIJ MEDICAL PC, GARA MEDICAL CARE PC, ATLAS RADIOLOGY PC, SANFORD CHIROPRACTIC PC, SKY LINE PHYSICAL THERAPY PC, DOS MANOS CHIROPRACTIC PC, UNION DME CORP, AFFINITY RX, WELLNESS PHYSICAL THERAPY REHABILITATION PLLC, ACU NEEDLE ACUPUNCTURE PC, CROSSTOWN CHIROPRACTIC PC, and JA PHYSICAL THERAPY PC is GRANTED; and it is further

ORDERED and ADJUDGED that on the first cause of action, plaintiff owes no duty to defendants LONG ISLAND JEWISH MEDICAL CENTER, HILLSIDE FAMILY CHIROPRACTIC PC, NORTH SHORE LIJ MEDICAL PC, GARA MEDICAL CARE PC, ATLAS RADIOLOGY PC, SANFORD CHIROPRACTIC PC, SKY LINE PHYSICAL THERAPY PC, DOS MANOS CHIROPRACTIC PC, UNION DME CORP, AFFINITY RX, WELLNESS PHYSICAL THERAPY REHABILITATION PLLC, ACU NEEDLE ACUPUNCTURE PC, CROSSTOWN CHIROPRACTIC PC, and JA PHYSICAL THERAPY PC to pay no-fault claims submitted in relation to the May 13, 2019 loss, claim no.: 000344672-001, and policy no. RS 8159606 18, referenced in the complaint; and it is further

ORDERED and ADJUDGED that on the second cause of action that all arbitrations, lawsuits and enforcement of award or judgments in connection with the May 13, 2019 loss, claim no.: 000344672/001, and policy no. RS 8159606, referenced in the complaint are hereby permanently STAYED.

<u>11/15/2021</u> DATE	 LAURENCE LOVE, J.S.C.	
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART <input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT <input type="checkbox"/> REFERENCE