

Country-Wide Ins. Co. v Chun Jin
2022 NY Slip Op 30548(U)
February 16, 2022
Supreme Court, New York County
Docket Number: Index No. 652933/2021
Judge: Sabrina B. Kraus
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. SABRINA KRAUS PART 57TR

Justice

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COUNTRY-WIDE INSURANCE COMPANY,

Plaintiff,

INDEX NO. 652933/2021

MOTION DATE 02/15/2022

MOTION SEQ. NO. 001

- v -

CHUN JIN, GREENWICH HOSPITAL, STEVEN S. WEINSTEIN, M.D., P.C., ESCHEN PROSTHETIC & ORTHOTIC LABORATORIES, INC., LENOX HILL PATHOLOGY, P.C., LENOX HILL MEDICAL ANESTHESIOLOGY, PLLC, EBILLC, MAIN STREET RADIOLOGY BAYSIDE, LLC, LABORATORY CORPORATION OF AMERICA HOLDINGS, INJURED WORKERS PHARMACY LLC, JUNGMAN MICHAEL SUH, MD., ACCURATE MONITORING LLC, BIM MEDICAL INC. D/B/A SHIEL MEDICAL LABORATORY, INC., AMERICAN ANESTHESIOLOGY OF NEW JERSEY P.C., JOSEPH WEINSTEIN DO, P.C., NORTHERN PHYSICAL THERAPY, CHIROPRACTIC, & ACUPUNCTURE, PLLC, BETHEL INTERVENTIONAL PAIN MGMT, LLC, NEUROPHYSIOLOGIC INTERPRETIVE MEDICINE, PLLC, HARMONY CARDIOVASCULAR CARE, P.C.

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

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

BACKGROUND

This action arises from an automobile accident on December 17, 2016 wherein Chun Shi Jin (CJ) was allegedly injured while in a vehicle insured by plaintiff. CJ filed a claim with plaintiff as a purported injured person under an insurance policy, number ES -9703714-16, issued by plaintiff.

Plaintiff commenced this action on or about May 4, 2021, seeking a declaratory judgment against CJ, Greenwich Hospital, Steven S. Weinstein, MD, PC, Eschen Prosthetic & Orthotic

Laboratories, Inc., Lenox Hill Pathology, P.C., Lenox Hill Medical Anesthesiology, PLLC, Ebi LLC, Main Street Radiology Bayside, LLC, Injured Workers Pharmacy LLC, Jungman Michael Suh, MD., Accurate Monitoring LLC, Bim Medical Inc. D/B/A Shiel Medical Laboratory, Inc., Joseph Weinstein Do, P.C., Northern Physical Therapy, Chiropractic, & Acupuncture, PLLC, Bethel Interventional Pain Mgmt, LLC, Neurophysiologic Interpretive Medicine, PLLC, and Harmony Cardiovascular Care, P.C., finding that plaintiff is not liable to pay no-fault benefits to the medical provider defendants for medical services allegedly provided to CJ because the CJ has exhausted the available limits of the insurance policy.

PENDING MOTION

In this declaratory judgment action, plaintiff moves, pursuant to CPLR §3215, for a default judgment against defendant CJ, Greenwich Hospital, Steven S. Weinstein, MD, PC, Eschen Prosthetic & Orthotic Laboratories, Inc., Lenox Hill Pathology, P.C., Lenox Hill Medical Anesthesiology, PLLC, Ebi LLC, Main Street Radiology Bayside, LLC, Injured Workers Pharmacy LLC, Jungman Michael Suh, MD., Accurate Monitoring LLC, Bim Medical Inc. D/B/A Shiel Medical Laboratory, Inc., Joseph Weinstein Do, P.C., Northern Physical Therapy, Chiropractic, & Acupuncture, PLLC, Bethel Interventional Pain Mgmt, LLC, Neurophysiologic Interpretive Medicine, PLLC, and Harmony Cardiovascular Care, P.C. Defendants have failed to appear or submit opposition.

DISCUSSION

CPLR § 3215(a) provides, in pertinent part, that “[w]hen a defendant has failed to appear, plead or proceed to trial... the plaintiff may seek a default judgment against [it].” “On a motion for leave to enter a default judgment pursuant to CPLR §3215, the movant is required to submit proof of service of the summons and complaint, proof of the facts constituting the claim, and

proof of the defaulting party's default in answering or appearing.” *Atlantic Cas. Ins. Co. v RJNJ Servs. Inc.*, 89 AD3d 649, 651 (2d Dept 2011).

When an insurer “has paid the full monetary limits set forth in the policy, its duties under the contract of insurance cease” (*Countrywide Ins. Co. v Sawh*, 272 AD2d 245 [1st Dept. 2000] citing to *Presbyterian Hosp. v. Empire Ins. Co.*, 220 A.D.2d 733, 633 N.Y.S.2d 340, citing *Presbyterian Hosp. v. Liberty Mut. Ins. Co.*, 216 A.D.2d 448, 628 N.Y.S.2d 396).

Plaintiff submits in support of the motion, the affirmation of Carl J. Gedeon, Esq., (NYSCEF Doc. No. 63), affidavits of service on the defendants (NYSCEF Doc. No. 66), as well as notice pursuant to CPLR § 3215(g) (NYSCEF Doc. No. 67); the insurance policy declaration page, demonstrating a policy limit of \$50,000 (NYSCEF Doc. No. 68); denial of claim form (NYSCEF Doc. No. 69); the affidavit of Jessica Mena-Sibrian, (NYSCEF Doc. No. 70), who is employed as a No-fault litigation/Arbitration Supervisor. Plaintiff also submits the payment ledger (NYSCEF Doc. No. 71) showing payments made with dates of services rendered.

Plaintiff does not, however, specifically identify any pending arbitration or litigation between the parties, although they seek a permanent stay of the same. Nor does plaintiff affirmatively state there is no current pending arbitration or litigation between the parties. Plaintiff also has failed to notify counsel for any named defendant that may have appeared on their behalf in a related action. For these reasons, plaintiff’s motion for a default judgment is denied without prejudice to renewal, on notice to counsel for any defendant and with an affidavit listing any pending arbitration or litigation which plaintiff seeks to stay, or a statement affirming that none exists.

CONCLUSION

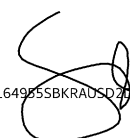
Wherefore, it is hereby:

ORDERED that plaintiff’s motion seeking a default judgment against defendants CJ, Greenwich Hospital, Steven S. Weinstein, MD, PC, Eschen Prosthetic & Orthotic Laboratories, Inc., Lenox Hill Pathology, P.C., Lenox Hill Medical Anesthesiology, PLLC, Ebi LLC, Main Street Radiology Bayside, LLC, Injured Workers Pharmacy LLC, Jungman Michael Suh, MD., Accurate Monitoring LLC, Bim Medical Inc. D/B/A Shiel Medical Laboratory, Inc., Joseph Weinstein Do, P.C., Northern Physical Therapy, Chiropractic, & Acupuncture, Pllc, Bethel Interventional Pain Mgmt, LLC, Neurophysiologic Interpretive Medicine, PLLC, and Harmony Cardiovascular Care, P.C. is denied without prejudice to renewal as discussed above; and it is further

ORDERED that, within 20 days from entry of this order, plaintiff shall serve a copy of this order with notice of entry on all defendants the Clerk of the General Clerk’s Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh); and it is further

This constitutes the decision and order of the court.



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2/16/2022
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	

APPLICATION:

CHECK IF APPROPRIATE: