

Hereford Ins. Co. v Citimedical I, PLLC
2022 NY Slip Op 31197(U)
April 11, 2022
Supreme Court, New York County
Docket Number: Index No. 153676/2020
Judge: Lori Sattler
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SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 02TR

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HEREFORD INSURANCE COMPANY,
 Plaintiff,

INDEX NO. 153676/2020

MOTION DATE 03/04/2022

- v -

MOTION SEQ. NO. 001

CITIMEDICAL I, PLLC, NYC MEDICAL & NEUROLOGICAL
 OFFICES P.C., OPTIMUM HEALTH ACUPUNCTURE,
 P.C., GODOFREDO ROMERO, CUSTOM RX
 PHARMACY, CITIMEDICAL SERVICES, P.C., BRAIN
 INJURY ASSOCIATES, PLLC

**DECISION + ORDER ON
 MOTION**

Defendant.

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HON. LORI SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26

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

In this action seeking declaratory judgment, Plaintiff Hereford Insurance Company (“Plaintiff”) seeks a default judgment pursuant to CPLR 3215 against defendants Citimedical I, PLLC; NYC Medical & Neurological Offices P.C.; Optimum Health Acupuncture, P.C.; Custom RX Pharmacy; Citimedical Services, P.C.; Brain Injury Associates, PLLC (collectively “Medical Provider Defendants”); and against claimant Godofredo Romero (“Claimant”).

This action arises out of an automobile accident that occurred on October 28, 2019. Nonparty Mohammad Siddiquee was driving a livery vehicle insured by Plaintiff when he lost control of the vehicle, causing it to swerve off the road and collide with a subway entrance. A pedestrian, nonparty Chi H. Wang, was injured by metal debris from the collision while walking up the stairs of the subway entrance.

Claimant Romeo alleges that he was also a pedestrian injured in the collision. He claims that he was standing near the scene of the collision while waiting to be picked up for

transportation to his work. Claimant asserts that he was struck in the back by the insured vehicle

during the collision, causing him to be thrown into the air and land on his head, resulting in injury. The police report filed after the collision does not mention the presence of pedestrians other than Mr. Wang. Claimant was not hospitalized immediately after the collision. Rather, according to testimony given during his examination under oath (“EUO”), he proceeded from the scene of the accident to his workplace and worked a full day. Claimant further testified that, after the collision, he began to experience head pains. His pain allegedly increased to the point where his family took him to Queens Hospital Center. Claimant stated in his EUO that he went to the hospital on the third day after the collision and received medical treatment for head and back injuries and that he was then hospitalized for six days. Following Claimant’s alleged hospital visit, the Medical Provider Defendants submitted No-Fault claims for treatment they allegedly provided to Claimant for injuries he purportedly sustained as a result of the collision.

Pursuant to its rights under the No-Fault Regulations, Plaintiff sought an EUO with Claimant to assess the legitimacy of the claimed injuries and the necessity of the treatments allegedly rendered by Medical Provider Defendants. Plaintiff contends that Claimant’s EUO testimony raised questions about the “legitimacy and medical necessity of the purported medical treatments,” along with “material misrepresentations” about the details of the collision and the nature of Claimant’s injuries (NYSCEF Doc. No. 14). As a result, Plaintiff denied all No-Fault claims submitted by the Medical Provider Defendants in relation to treatment rendered to Claimant for injuries allegedly sustained during the collision. Plaintiff commenced the present action seeking a declaratory judgment that it is not obligated to pay any of the claims submitted by the Medical Provider Defendants due to a founded belief that the No-Fault claims submitted by the Medical Provider Defendants were not causally related to the collision and/or did not arise from an insured event.

A party is entitled to default judgment pursuant to CPLR 3215 where it files proof of service of its Summons and Complaint, proof of the facts constituting its claim, and proof of default (CPLR 3215[f]; *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 [1st Dept 2016]). Here, Plaintiff has properly filed its proof of service of the Summons and Complaint on all defendants and proof of the defendants' default (NYSCEF Doc. Nos., 19, 21-22). Plaintiff also presents facts in support of its claim that it has a founded belief that Claimant's alleged injuries did not arise out of a covered incident or were not causally related to the collision (NYSCEF Doc. Nos. 14-17).

An insurer may assert a lack of coverage defense based on the fact or founded belief that a claimant's alleged injury did not arise out of a covered accident (*Cent. Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195, 201 [1997]). In demonstrating the facts that constitute its founded belief, an insurer can present circumstantial evidence to prove such facts provided that a reasonable inference can be drawn from the facts presented (*Benzaken v Verizon Communications, Inc.*, 21 AD3d 864, 865 [2d Dept 2005], quoting *Staples v Sisson*, 274 AD2d 779, 781 [3d Dept 2000]). A defaulting defendant is deemed to have admitted the allegations in a plaintiff's complaint by failing to answer (*State Farm Mut. Auto. Ins. Co. v Surgicore of Jersey City*, 195 AD3d 454, 455 [1st Dept 2021]).

The Court finds that Plaintiff has demonstrated sufficient facts to support its founded belief that Claimant's injuries did not arise out of a covered accident and/or that they were not causally related to the October 19, 2019 collision. The police report does not mention Claimant's presence at the scene or injuries that he allegedly sustained (NYSCEF Doc. No. 15). In addition, Claimant's EUO testimony is inconsistent with respect to the timing of his hospitalization, first indicating that he went to the hospital after work on the day of the accident and later stating that he only was hospitalized four days later (NYSCEF Doc. No. 16 at 19:20-23,

20:15-21:16). Furthermore, Claimant never produced any records of the alleged hospital stay to substantiate the treatment he claims he received. Finally, Claimant never executed his EUO transcript. Accordingly, Plaintiff's motion is granted on default. Plaintiff is therefore entitled to deny payment of No-Fault claims to the Medical Provider Defendants arising out of injuries allegedly sustained by Claimant in the October 19, 2019, collision and it is hereby:

ORDERED that Plaintiff's motion for default judgment against Citimedical I, PLLC; NYC Medical & Neurological Offices P.C.; Optimum Health Acupuncture, P.C.; Custom RX Pharmacy; Citimedical Services, P.C.; Brain Injury Associates, PLLC; and Godofredo Romero is granted; and it is further

ORDERED, ADJUDGED and DECLARED that Plaintiff has no duty to pay any No-Fault benefits, in the form of sums, monies, damage, awards, or benefits to Citimedical I, PLLC; NYC Medical & Neurological Offices P.C.; Optimum Health Acupuncture, P.C.; Custom RX Pharmacy; Citimedical Services, P.C.; Brain Injury Associates, PLLC; and Godofredo Romero; their agents, employees, assignees, or heirs arising out of any current or future proceeding, including without limitation, arbitrations and lawsuits seeking to recover No-Fault benefits as for the October 19, 2019 collision referenced in the amended complaint and any such arbitrations and lawsuits are stayed in accordance with this order.

This constitutes the Decision and Order of the Court.



4/11/2022

DATE

LORI SATTLER, J.S.C.

CHECK ONE:

CASE DISPOSED
 GRANTED DENIED

NON-FINAL DISPOSITION
 GRANTED IN PART OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT REFERENCE