

<b>Liberty Mut. Ins. Co. v Smith</b>
2022 NY Slip Op 31236(U)
April 12, 2022
Supreme Court, New York County
Docket Number: Index No. 650339/2020
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA JAMES

PART 59

Justice

-----X

LIBERTY MUTUAL INSURANCE COMPANY and LM
GENERAL INSURANCE COMPANY,

Plaintiffs,

INDEX NO. 650339/2020

MOTION DATE 03/16/2021

MOTION SEQ. NO. 001

- v -

CIARA JANTANASIA DANA SMITH, MELINDA SHOSHANA
MARSH, ELIZABETH NEUBLE, 21ST CENTURY
PHARMACY INC., AGYAL PHYSICAL THERAPY
PLLC, ALFORD A. SMITH MD PC, BEST EMPIRE MEDICAL
PC, COMPREHENSIVE PSYCHOLOGICAL
PC, CROSTOWN CHIROPRACTIC PC, DIANA BEYNIN
DC, MALVINA DRUG CORP., MEDICAL SUPPLY DEPOT
GROUP CORP., METRO PAIN SPECIALISTS
PC, PERLOFF PHYSICAL THERAPY PC, QIXIA
ACUPUNCTURE PC, SPEEDY RECOVERY EQUIPMENT
AND SUPPLIES INC., STAND UP MRI OF BENSONHURST
PC, STAND UP MRI OF BROOKLYN PC, SUMMIT MEDICAL
SERVICES PC, UNION DME CORP, and WELLNESS
PHYSICAL THERAPY REHABILITATION PLLC,

Defendants.

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DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 7, 8, 9, 10, 11, 12,
13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 33, 34, 35, 36, 37

were read on this motion to/for JUDGMENT - DEFAULT

ORDER

Upon the foregoing documents, it is

ORDERED that the plaintiffs' motion for a default judgment is
granted only to the extent that judgment in their favor dismissing
the complaint against defendants Ciara Jantansia Dana Smith,
Melinda Shoshana Marsh, Elizabeth Neuble, 21st Century Pharmacy
Inc, Best Empire Medical PC, Comprehensive Psychological PC,
Crosstown Psychological PC, Crosstown Chiropractic PC, Crosstown

Chiropractic PC, Diana Beynin DC, Malvina Drug Corp, Perloff Physical Therapy PC, Qixia Acupuncture PC, Speedy Recovery Equipment and Supplies Inc., Summit Medical Services PC, Union DME Corp, Wellness Physical Therapy Rehabilitation PLLC, only, is GRANTED, without opposition; and it is further

ADJUDGED and DECLARED that plaintiffs Liberty Mutual Insurance Company and LM General Insurance Company are not obligated to honor or pay claims for reimbursement as assignees of Ciara Jantanasia Dana Smith, Melinda Shoshana Marsh and/or Elizabeth Neuble to defendants 21<sup>st</sup> Century Pharmacy Inc, Best Empire Medical PC, Comprehensive Psychological PC, Crosstown Psychological PC, Crosstown Chiropractic PC, Crosstown Chiropractic PC, Diana Beynin DC, Malvina Drug Corp, Perloff Physical Therapy PC, Qixia Acupuncture PC, Speedy Recovery Equipment and Supplies Inc., Stand Up MRI of Brooklyn, PC, Summit Medical Services PC, Union DME Corp, and Wellness Physical Therapy Rehabilitation PLLC and that such defaulting defendants have no rights to litigate or arbitrate for No-Fault benefits with respect to the May 20, 2019 alleged accident involving Ciara Jantanasia Dana Smith, Melinda Shoshana Marsh and/or Elizabeth Neuble; and it is further

ORDERED that plaintiffs' motion for a default judgment against the remaining defendants is otherwise denied, and the balance of this action is severed and continued; and it is further

ORDERED that the cross motion of defendants Agyal Physical Therapy PLLC, Alford A. Smith, MD, PC, and Medical Supply Depot Group Corp, and Metro Pain Specialists, PC, to extend their time to file an Answer is GRANTED; and it is further

ORDERED that the Answer in the proposed form annexed to defendants' responsive papers (NYSCEF Document Number 25) shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that counsel are directed to transmit to SFC-Part59@nycourts.gov and to SFC-Part59-Clerk@nycourts.gov and post on NYSCEF a proposed preliminary conference order or competing proposed preliminary conference order(s) no less than two days before May 17, 2022, on which date counsel shall appear via Microsoft Teams, unless such appearance be waived by the Court.

#### DECISION

This court concurs with plaintiff that the cross moving defendants allege no meritorious defense, having failed to submit an Answer, which is verified by any party to this action, or an affidavit of any medical provider that sets forth the necessity for the medical services rendered arising from the alleged accident, or any other facts of their claim for assigned no-fault benefits. However,

"a showing of a potential meritorious defense is not an essential component of a motion to serve a late answer (CPLR 3012[d] ), where, as here, no default order or

judgment has been entered (see *Nason v. Fisher*, 309 A.D.2d 526, 765 N.Y.S.2d 32 [2003]; *DeMarco v. Wyndham Intl.*, 299 A.D.2d 209, 749 N.Y.S.2d 139 [2002]; *Terrones v. Morera*, 295 A.D.2d 254, 743 N.Y.S.2d 860 [2002] )."

Jones v 414 Equities, LLC, 57 AD3d 65, 81 (1<sup>st</sup> Dept 2008).

"[T]he pandemic-related Executive Orders in effect at the time . . . extended time limitations from March 20 to November 3, 2020 (Executive Orders [Cuomo] Nos. 202.8, 202.67 [9 NYCRR 8.202.8, 8.202.57]).

AS Helios LLC v Chauhan, 2022 NY Slip Op 01959,\*2, \_\_NYS3d\_\_, (1<sup>st</sup> Dept 2022). By such measure, defendants' answer was due on or about December 4, 2020. Thus, such pleading was approximately two months late at the time that plaintiff moved herein for a default judgment. As in Jones, supra, defendants' excuses for their untimeliness, i.e., that the "delay [was] occasioned by the intervening time required for the Secretary of State's copy to be served upon [it]", as well as by a "backlog" of declaratory judgment summonses and complaints, are "hardly overwhelming". Nevertheless, as in Jones, supra, "since the delay was brief and plaintiff was not prejudiced by the delay, [this court] find[s] the excuse to be adequate".

*Debra A. James*  
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<u>4/12/2022</u>			<u>DEBRA JAMES, J.S.C.</u>
DATE			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE