

<b>Liberty Mut. Ins. Co. v Desravines</b>
2022 NY Slip Op 31330(U)
April 19, 2022
Supreme Court, New York County
Docket Number: Index No. 656611/2020
Judge: Suzanne Adams
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE ADAMS PART 39TR

Justice

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LIBERTY MUTUAL INSURANCE COMPANY, LM
GENERAL INSURANCE COMPANY,

Plaintiff,

INDEX NO. 656611/2020

MOTION DATE 12/03/2021

MOTION SEQ. NO. 002

- v -

CARLS DESRAVINES, ALEXIA'S PHARMACY INC,
ARISTA PHYSICAL THERAPY PC, CAVALLARO MEDICAL
SUPPLY INC, CITIMEDICAL I PLLC, IGOR MAYZENBERG
LAC, INEW REHAB PHYSICAL THERAPY PC, JP MEDICAL
SERVICES PC, LIFELINE MEDICAL IMAGING
PC, MEDICAL SUPPLY DEPOT GROUP CORP, QR
MEDICAL SERVICES PC, RAF SPORTS CHIROPRACTIC
PC, SONIA ARMENGOL, SOUTH SHORE CHIROPRACTIC

Defendant.

DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30,
31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and oral argument having been held virtually before the
court on January 13, 2022, it is ordered that plaintiffs' motion for summary judgment is granted.
This matter arises out of a dispute regarding benefits pursuant to New York State No-Fault
Insurance Law involving treatment for defendant Carl Desravines ("Desravines") who was
involved in a motor vehicle accident on September 2, 2019. The policy in question was issued to
non-party Samaria Seda under policy number AOS22130199140 (hereinafter, "the Policy"),
effective December 6, 2018, through December 6, 2019. Following the accident, Desravines
began seeking medical treatment for his alleged injuries, and his medical providers then submitted
bills on assignment from Desravines for No-Fault reimbursement. Plaintiffs commenced this
action in November 2020 against Desrvavines and the co-defendant medical providers based on

Desravines' failure to appear for his timely and properly scheduled Examinations Under Oath ("EUO"). By decision and order of this court dated September 17, 2021 (NYSCEF doc. no. 24), plaintiffs were granted a default judgment against the non-answering defendants CARLS DESRAVINES, ARISTA PHYSICAL THERAPY PC, IGOR MAYZENBERG LAC, INEW REHAB PHYSICAL THERAPY PC, QR MEDICAL SERVICES PC, and SONIA ARMENGOL MD. Plaintiffs now move pursuant to CPLR 3212 for summary judgment against the remaining defendants in this action, all of whom have interposed an answer: ALEXIA'S PHARMACY INC, CAVALLARO MEDICAL SUPPLY INC, CITIMEDICAL I PLLC, JP MEDICAL SERVICES PC, LIFELINE MEDICAL IMAGING PC, MEDICAL SUPPLY DEPOT GROUP CORP, RAF SPORTS CHIROPRACTIC PC, and SOUTH SHORE CHIROPRACTIC (collectively, the "Answering Defendants"). The motion is opposed by defendants CAVALLARO MEDICAL SUPPLY INC., CITIMEDICAL I, PLLC, LIFELINE MEDICAL IMAGING, P.C., MEDICAL SUPPLY DEPOT GROUP CORP., ALEXIA'S PHARMACY INC, JP MEDICAL SERVICES PC and RAF SPORTS CHIROPRACTIC PC.

In the context of No-Fault claims, a claimant fails to complete the condition precedent to coverage of his claims when he fails to appear for the requested Independent Medical Examination ("IME"), or as in this instance, the requested EUO. In *Unitrin Advantage Ins. Co. v. Bayshore Physical Therapy, PLLC*, 82 A.D.3d 559 (1<sup>st</sup> Dept, 2011), the Appellate Division held:

The failure to appear for IMEs requested by the insurer "when, and as often as, [it] may reasonably require" (Insurance Department Regulations [11 NYCRR] § 65-1.1) is a breach of a condition precedent to coverage under the No-Fault policy, and therefore fits squarely within the exception to the preclusion doctrine, as set forth in *Central Gen. Hosp. v. Chubb Group of Ins. Cos.*, 90 N.Y.2d 195, 659 N.Y.S.2d 246, 681 N.E.2d 413 [1997]. Accordingly, when defendants' assignors failed to appear for the requested IMEs, plaintiff had the right to deny all claims retroactively to the date of loss, regardless of whether the denials were timely issued (*See*

Insurance Department Regulations [11 NYCRR] § 65-3.8 [c]; Fogel, 35 A.D.3d at 721-22, 827 N.Y.S.2d 217).

Here, plaintiffs have demonstrated that they timely and properly requested two EUOs of Desravines in accordance with the No-Fault Regulations. *See* 11 NYCRR 65-3.5 (b). When Desravines failed to appear at either EUO without any response or reasonable request to reschedule, plaintiffs properly denied all bills submitted by the medical provider defendants based upon his failure to appear. Accordingly, it is hereby


ORDERED that plaintiffs' motion for summary against the Answering Defendants ALEXIA'S PHARMACY INC, CAVALLARO MEDICAL SUPPLY INC, CITIMEDICAL I PLLC, JP MEDICAL SERVICES PC, LIFELINE MEDICAL IMAGING PC, MEDICAL SUPPLY DEPOT GROUP CORP, RAF SPORTS CHIROPRACTIC PC, and SOUTH SHORE CHIROPRACTIC is granted; and it is further

ORDERED, ADJUDGED and DECREED that each and every part of any arbitration or court hearing brought by the Answering Defendants for No-Fault benefits stemming from the alleged occurrence of September 2, 2019, is permanently stayed; and it is further

ORDERED, ADJUDGED and DECREED that any arbitration or court hearing brought by the Answering Defendants for No-Fault benefits stemming from the alleged occurrence of September 2, 2019, is barred from continuing or being commenced; and it is further

ORDERED, ADJUDGED and DECREED that plaintiffs' denials of all claims for No-Fault by the Answering Defendants stemming from the alleged occurrence are deemed valid.

This constitutes the decision and order of the court.

<u>4/19/2022</u> DATE		 SUZANNE ADAMS, J.S.C.
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input 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