

Liberty Mut. Ins. Co. v Davis
2022 NY Slip Op 31455(U)
May 2, 2022
Supreme Court, New York County
Docket Number: Index No. 656218/2020
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. 656218/2020

MOTION DATE 12/29/2021

MOTION SEQ. NO. 001

- v -

RONALD DAVIS, JASMIN CARR, ISLAND AMBULATORY
SURGERY CENTER LLC, LENOX HILL RADIOLOGY
MEDICAL IMAGING ASSOCIATES PC, LR MEDICAL
PLLC, PHYSICAL MEDICINE & REHABILITATION OF NEW
YORK, PC, PMGT MEDICAL AND SURGICAL
ASSOCIATES, L.L.P., SEDATION VACATION
PRIOPERATIVE MEDICINE PLLC,

Defendant.

DECISION + ORDER ON
MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14,
15, 16, 17, 18, 19, 20, 21, 22

were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is ordered that plaintiffs' motion is granted. Plaintiffs in
this action seek a declaration nullifying any No-Fault benefits or reimbursements allegedly due
defendants arising out of a motor vehicle incident on December 11, 2019, involving the individual
defendants Ronald Davis and Jasmin Carr (collectively, the "Individual Defendants"). The action
was commenced on or about November 12, 2020, naming the medical provider defendants listed
in the caption above. Subsequent to commencement of this action, additional medical providers
have submitted claims for reimbursement to plaintiffs, who now move to amend the caption and
the complaint to include these new providers. The Individual Defendants oppose the motion on
the grounds that it is defective because it is missing an amended or supplemental summons, and

RONALD DAVIS and JASMIN CARR,

Individual Defendants,

-and-

ACCURATE MONITORING, LLC,
ADVANCED ORTHOPEDICS & NEUROSURGERY, LLC,
ANDREW A. MEROLA, M.D.,
INFINITY DME, LLC,
ISLAND AMBULATORY SURGERY CENTER LLC,
LABORATORY CORPORATION OF AMERICA,
LENOX HILL RADIOLOGY AND MEDICAL IMAGING ASSOCIATES, P.C.,
LR MEDICAL, PLLC,
MOUNTAIN SURGERY CENTER, LLC,
NEUROPHYSIOLOGIC INTERPRETIVE SPECIALISTS LLC,
PHYSICAL MEDICINE & REHABILITATION OF NEW YORK, P.C.,
PMGT MEDICAL AND SURGICAL ASSOCIATES, L.L.P.,
PMR MEDICAL P.C.
SEDATION VACATION PERIOPERATIVE MEDICINE, PLLC,
UNIVERSITY ORTHOPEDICS OF NEW YORK, PLLC, and
WEST ORANGE SURGICAL CENTER, LLC,

Medical Provider Defendants,
Collectively, "Defendants."

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and it is further

ORDERED that the Verified First Amended Complaint, in the form annexed to the motion papers, but with an appropriate signature and/or verification page and any attached documents referenced therein, shall be served together with service of a copy of this order with notice of entry upon all parties who have appeared in the action, and shall be deemed served upon said service; and it is further

ORDERED that a Supplemental Summons and the Verified First Amended Complaint, in the form described in the preceding paragraph, shall be served, in accordance with the Civil Practice Law and Rules, upon the additional parties in this action within 30 days after service of a copy of this order with notice of entry; and it is further

the proposed amended complaint does not clearly show the proposed changes, is incomplete, is unsigned by the drafting attorney, and purportedly misstates certain factual allegations.

Pursuant to CPLR 3025(b), “[a] party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties.” Leave to amend pleadings is generally freely given, absent prejudice and surprise resulting from the delay. *Edenwald Contr. Co. v. City of New York*, 60 N.Y.2d 957, 959 (1983); *Antwerpse Diamantbank N.V. v. Nissel*, 27 A.D.3d 207, 208 (1st Dep’t 2006). In addition, CPLR § 1003 provides in pertinent part that “[p]arties may be added at any stage of the action by leave of court.”

The record before the court does not support a finding that the Individual Defendants would be prejudiced or surprised by the addition of new medical providers as party defendants. The Individual Defendants’ opposition is founded only on an alleged failure to submit papers pursuant to the requirements of CPLR 3025(b), which are not a viable independent basis for denial of a motion to amend. *Greene v. Esplanade Venture Partnership*, 36 N.Y.3d 513, 526 n. 3 (2021). Furthermore, a defendant cannot control what a plaintiff may allege in a complaint, and thus it is premature, as well as irrelevant to the instant motion, for the Individual Defendants to challenge plaintiffs’ allegations regarding the driver and/or the passenger in the December 11, 2019, incident.

Accordingly, it is hereby

ORDERED that plaintiffs’ motion is granted; and it is further

ORDERED that the caption in this action is amended to read as follows:

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LIBERTY MUTUAL INSURANCE COMPANY and
LM GENERAL INSURANCE COMPANY,

Plaintiffs,

-against-

ORDERED that plaintiffs' counsel shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office 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 (ww.nycourts.gov/supctmanh)).

This constitutes the decision and order of the court.

5/2/2022
DATE



SUZANNE ADAMS, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT		