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| <b>Liberty Mut. Ins. Co. v Martin</b>  |
| 2022 NY Slip Op 31500(U)   |
| May 5, 2022  |
| Supreme Court, New York County   |
| Docket Number: Index No. 650665/2021   |
| Judge: Nancy M. Bannon   |
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. NANCY BANNON PART 42

Justice

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LIBERTY MUTUAL INSURANCE COMPANY, LM
INSURANCE CORPORATION,

Plaintiffs,

INDEX NO. 650665/2021

MOTION DATE 03/24/2022

MOTION SEQ. NO. 001

- v -

TREVOHN MARTIN, MICHAEL HUGHES, 406 MEDICAL
PC, ACUPUNCTURE AND MASSAGE THERAPY
PC, ADVANCED MEDICAL CONCEPTS PC, AFFINITY RX
INC, AUTORX LLC, AXIS PT PC, BCJ MEDICAL PC, BURKE
PHYSICAL THERAPY PC, CITIMEDICAL I PLLC, DAELIM
CHOI PHYSICAL THERAPY PC AKA DAELIM CHOI DPT,
ENGLINTON MEDICAL PC, HONG ACUPUNCTURE
PC, IVS PHARMACY CORP, JAN SCHREUDER MD
PC, JUBILERA ACUPUNCTURE PC, LDU THERAPY INC,
LENCO DIAGNOSTIC LABORATORIES INC AKA LENCO
DIAGNOSTIC LABORATORY, LILY ZARHIN,
METROPOLITAN MEDICAL AND SURGICAL PC AKA
METROPOL MEDICAL AND SURGERY, MILASIG INC,
MILLENNIUM AMBULATORY SURGERY CENTER
LLC, PREMIER ANESTHESIA ASSOCIATES PA, QUALITY
MED EQUIP INC, QUALITY ORTHOPEDICS & COMPLETE
JOINT CARE PC, R2K PHYSICAL THERAPY PC, RGW
CHIROPRACTIC DIAGNOSTICS PC, RIDGEWOOD
DIAGNOSTIC LABORATORY LLC, ROCKAWAY
COMPLETE CHIROPRACTIC PC, SCOB LLC, STAND-UP
MRI OF BROOKLYN PC, SUNG U PARK, TIME TO CARE
PHARMACY INC, WELLNESS DIAGNOSTIC IMAGING
PC, YT TSAOS CHIROPRACTIC PC AKA YATING TSAO
DC,

DECISION + ORDER ON
MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 15, 16, 17, 18, 19,
20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37

were read on this motion to/for JUDGMENT - DEFAULT

In this declaratory judgment action, the plaintiffs move pursuant to CPLR 3215 for leave
to enter a default judgment against the defendants Trevohn Martin and Michael Hughes (the
individual defendants), and the defendants 406 Medical PC, Acupuncture and Massage
Therapy PC, Advanced Medical Concepts PC, AutoRX LLC, Axis PT PC, Englinton Medical PC,
IVS Pharmacy Corp., Jan Schreuder MD PC, LDU Therapy Inc., Lenco Diagnostic Laboratories
Inc., a/k/a Lenco Diagnostic Laboratory, Metropolitan Medical and Surgical PC, a/k/a Metropol

Medical and Surgery, Milasig Inc., Millennium Ambulatory Surgery Center LLC, Premier Anesthesia Associates PA, Quality Med Equip Inc., Quality Orthopedics & Complete Joint Care PC, R2K Physical Therapy PC, Ridgewood Diagnostic Laboratory LLC, Rockaway Complete Chiropractic PC, Scob LLC, Stand-Up MRI of Brooklyn PC, Sung U Park, Time To Care Pharmacy Inc., and Wellness Diagnostic Imaging PC (the defaulting health-care defendants), declaring that, pursuant to article 51 of the Insurance Law, they are not obligated to pay no-fault benefits to the defaulting health-care defendants to reimburse them for treatment they rendered to the individual defendants for injuries allegedly sustained in a motor vehicle accident. The defendants have not opposed the motion.

Initially, the court notes that by stipulation dated March 14, 2022, the plaintiffs have withdrawn their motion insofar as it seeks relief against defaulting health-care defendant LDU Therapy Inc. Accordingly, the motion is deemed withdrawn against that defendant only and the term defaulting health-care defendants, as used hereinafter, shall exclude that defendant.

The plaintiffs' motion is otherwise granted to the extent of awarding the plaintiffs judgment declaring that they are not obligated to pay no-fault benefits to the defaulting defendants, inasmuch as they have provided proof of service of the summons and complaint upon such defendants, proof of the facts constituting the claim, and proof of such defendants' defaults (see CPLR 3215[f]; Rivera v Correction Officer L. Banks, 135 AD3d 621 [1<sup>st</sup> Dept 2016]), timely moved for that relief (see CPLR 308[2]; 320[a], 3215[c]; Gerschel v Christensen, 128 AD3d 455, 457 [1<sup>st</sup> Dept 2015]), and satisfied the notice requirements for this motion, as articulated in CPLR 3215(g).

As to the facts constituting their claim, the plaintiffs submitted proof to demonstrate, *prima facie*, that they properly denied coverage on the basis that the subject motor vehicle collision in which the individual defendants claimed to have been injured was not accidental but was intentional, and thus not a covered incident under the subject no-fault policy. See Liberty Mutual Ins. Co. v Goddard, 29 AD3d 698 (2<sup>nd</sup> Dept. 2006). "An intentional and staged collision caused in the furtherance of an insurance fraud scheme is not a covered accident under a policy of insurance." Matter of Liberty Mut. Ins. Co. v Goddard, 29 AD3d 698, 699 (2<sup>nd</sup> Dept 2006). In their applications for no-fault benefits, the individual defendants alleged, *inter alia*, that they were injured in a motor vehicle accident on August 20, 2019, and that they thereafter obtained medical treatment or medical supplies from the defaulting health-care defendants. According to the plaintiffs, the defaulting health-care defendants sought payment, as assignees of the individual defendants, for no-fault benefits under insurance policy number AO522116292375, issued by the plaintiff to Hughes. See Insurance Law 5106(a); 11 NYCRR 65-1.1.

The plaintiffs submitted proof sufficient to establish that the alleged collision was likely staged or intentional and that no-fault coverage was thereby vitiated. This evidence includes factual proof that (a) the individual defendants and another passenger in the subject vehicle not named as a defendant, each of whom testified at examinations under oath (EUOs), contradicted each other as to several material facts regarding the collision, (b) the driver of the other vehicle

involved in the collision testified that he felt the individual defendants had driven into his vehicle on purpose, (c) defendant Martin was involved in four prior losses which were investigated as suspected staged collisions and which involved similar, if not identical, facts, (d) as was the case in each of defendant Martin's prior claims, the individual defendants' claims involved a new policy with loss alleged shortly after inception, and (d) no injuries were reported at the scene of the collision. See DSD Acupuncture, P.C. v Met Life Auto & Home, 49 Misc 3d 153(A) (App Term, 2<sup>nd</sup> Dept, 2<sup>nd</sup> & 11th Jud. Dists. 2015); 21<sup>st</sup> Century Ins. Co. v Peebles, 2015 NY Slip Op 31695(U), 2015 N.Y. Misc. LEXIS 3255 (Sup Ct, N.Y. County 2015); cf. Nationwide Gen. Ins. Co. v Bates, 130 AD3d 795 (2<sup>nd</sup> Dept 2015). Having failed to appear or oppose the motion, the defaulting defendants have offered no argument or proof to the contrary.

Accordingly, it is

ORDERED that the instant motion is withdrawn, the action is discontinued, and the complaint is dismissed, with prejudice, as against defendant LDU Therapy Inc. pursuant to the parties' Stipulation of Discontinuance dated March 14, 2022, and it is further

ORDERED that the balance of the plaintiff's motion pursuant to CPLR 3215 for leave to enter a default judgment against certain non-answering defendants is granted, without opposition; and it is further


ADJUDGED and DECLARED that the plaintiffs are not obligated to pay no-fault benefits to Trevohn Martin, Michael Hughes, 406 Medical PC, Acupuncture and Massage Therapy PC, Advanced Medical Concepts PC, AutoRX LLC, Axis PT PC, Englinton Medical PC, IVS Pharmacy Corp., Jan Schreuder MD PC, Lenco Diagnostic Laboratories Inc., a/k/a Lenco Diagnostic Laboratory, Metropolitan Medical and Surgical PC, a/k/a Metropol Medical and Surgery, Milasig Inc., Millennium Ambulatory Surgery Center LLC, Premier Anesthesia Associates PA, Quality Med Equip Inc., Quality Orthopedics & Complete Joint Care PC, R2K Physical Therapy PC, Ridgewood Diagnostic Laboratory LLC, Rockaway Complete Chiropractic PC, Scob LLC, Stand-Up MRI of Brooklyn PC, Sung U Park, Time To Care Pharmacy Inc., and Wellness Diagnostic Imaging PC pursuant to article 51 of the Insurance Law in connection with the motor vehicle accident that occurred on August 20, 2019, in any action or arbitration proceeding; and it is further

ADJUDGED and DECLARED that all actions, proceedings or arbitrations arising from injuries alleged to have been sustained by the defendants Trevohn Martin and Michael Hughes as a result of the August 20, 2019, accident are permanently stayed, and that the defendants 406 Medical PC, Acupuncture and Massage Therapy PC, Advanced Medical Concepts PC, AutoRX LLC, Axis PT PC, Englinton Medical PC, IVS Pharmacy Corp., Jan Schreuder MD PC, Lenco Diagnostic Laboratories Inc., a/k/a Lenco Diagnostic Laboratory, Metropolitan Medical and Surgical PC, a/k/a Metropol Medical and Surgery, Milasig Inc., Millennium Ambulatory Surgery Center LLC, Premier Anesthesia Associates PA, Quality Med Equip Inc., Quality Orthopedics & Complete Joint Care PC, R2K Physical Therapy PC, Ridgewood Diagnostic Laboratory LLC, Rockaway Complete Chiropractic PC, Scob LLC, Stand-Up MRI of Brooklyn

PC, Sung U Park, Time To Care Pharmacy Inc., and Wellness Diagnostic Imaging PC are enjoined from commencing any such further actions, proceedings or arbitrations; and it is further

ORDERED that the plaintiffs shall serve a copy of this order with notice of entry upon all defendants within 30 days of the date of this order.

This constitutes the Decision and Order of the court.

  
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NANCY M. BANNON, J.S.C.  
**HON. NANCY M. BANNON**

5/5/2022  
DATE

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|-----------------------|--------------------------|----------------------------|-------------------------------------|-----------------------|--------------------------|-----------|
| CHECK ONE:            | <input type="checkbox"/> | CASE DISPOSED              | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION |                          |           |
|                       | <input type="checkbox"/> | GRANTED                    | <input type="checkbox"/>            | DENIED                | <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 |