

**Liberty Mut. Ins. Co. v Gobourne**

2023 NY Slip Op 32539(U)

July 24, 2023

Supreme Court, New York County

Docket Number: Index No. 654474/2020

Judge: Arthur F. Engoron

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARTHUR F. ENGORON PART 37

Justice

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LIBERTY MUTUAL INSURANCE COMPANY, LM
GENERAL INSURANCE COMPANY,

Plaintiffs,

INDEX NO. 654474/2020

MOTION DATE 06/27/2023

MOTION SEQ. NO. 003

- v -

JAHMAWI GOBOURNE, ADVANCED ORTHOPEDICS AND
JOINT PRESERVATION PC, ALLSTATE CHIROPRACTIC
PC, AMAZING ANESTHESIA PC, BASEM CARE PT PC,
DOS MANOS CHIROPRACTIC, JOSHUA ROCKER MD,
LONG ISLAND JEWISH MEDICAL CENTER, MEDAID
RADIOLOGY LLC, METRO PAIN SPECIALISTS PC, NEW
YORK CITY FIRE DEPARTMENT, NORTH SHORE LIJ
MEDICAL PC, NORTH SHORE UNIVERSITY HOSPITAL,
RISING LOTUS ACUPUNCTURE PC, ROXBURY
ANESTHESIA LLC, STAND UP MRI OF BROOKLYN PC,
SURGICORE OF NEW JERSEY CITY LLC, WALLEGOOD
INC., WHIPLASH CHIROPRACTIC

Defendants.

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DECISION + ORDER ON
MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 41, 42, 43, 44, 45,
46, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion for

SUMMARY JUDGMENT

Upon the foregoing documents, and for the reasons stated hereinbelow, the motion of plaintiffs
for summary judgement is granted.

Background

This action arises out of claims for no-fault reimbursement from a July 5, 2019 motor vehicle
accident (the "Incident") between a motor vehicle owned by defendant, Jahmawi Gobourne
("Gobourne"), and a motor vehicle owned and operated by non-party Karla Reteguis in which
Reteguis's car allegedly hit the passenger side of Gobourne's car, causing the rear-view mirror to
fly off and hit Gobourne's forehead. NYSCEF Doc. No. 1.

At the time of the Incident, Gobourne's vehicle was insured by plaintiffs, Liberty Mutual
Insurance Company and LM General Insurance Company, under a policy issued to non-party
Tanya Chang-McIntyre ("the Insured"), effective October 9, 2018, through October 9, 2019,
with limits of no-fault medical bill coverage of \$50,000 per person (the "Policy"). NYSCEF
Doc. No. 1. Gobourne is a Listed Operator on the Policy. Id.

The Insured obtained the Policy using the address 51 Southaven Avenue, Medford, NY 11763. NYSCEF Doc. No. 1. Plaintiffs allege the Insured actually lives and garages the vehicle at 216-18 99th Avenue, Queens Village, NY 11429. Id.

Following the Incident, Gobourne sought medical treatment for his alleged injuries from defendants Advanced Orthopedics and Joint Preservation PC, Allstate Chiropractic PC, Amazing Anesthesia PC, Basem Care PT PC, Dos Manos Chiropractic PC, Joshua Rocker MD, Long Island Jewish Medical Center, Medaid Radiology LLC, Metro Pain Specialists PC, New York City Fire Department, North Shore LIJ Medical PC, North Shore University Hospital, Rising Lotus Acupuncture PC, Roxbury Anesthesia LLC, Stand Up MRI of Brooklyn PC, Surgicore of New Jersey City LLC, Wallegood Inc. and Whiplash Chiropractic PC (the "Medical Provider Defendants"). NYSCEF Doc. No. 1. The Medical Provider Defendants, in turn, submitted bills to plaintiffs seeking "No-Fault and bodily injury reimbursement," causing plaintiffs to open an investigation to "verify the garaging of the vehicle due to suspected rate evasion." NYSCEF Doc. Nos. 1, 43.

On September 6, 2019, at an Examination Under Oath ("EUO"), Insured testified that Gobourne was her cousin and that the Medford address was their aunt's residence. NYSCEF Doc. No. 14. When asked about her residency and relationship with Gobourne, Insured became "uncomfortable" with the questioning and asked that the EUO be rescheduled. Id. at 15. The EUO was rescheduled; however, Insured failed to show up. NYSCEF Doc. No. 1.

On October 22, 2019, Gobourne appeared for an EUO and testified that he owned the vehicle, that the Medford address was his aunt's residence, that he had moved there in April 2019 but stayed at either his mother's home in Brooklyn or his girlfriend's home in Valley Stream, N.Y. Gobourne also stated that he had previously resided with his sister in Queens Village for 15-16 years and that his personal mail, work mail, W-2s and tax filings, vehicle paperwork, and driver's license, all list the Queens Village address. He further stated that he had insured his vehicle through the Insured because it would be "cheaper." NYSCEF Doc. No. 15.

On October 23, 2019, and November 25, 2019, plaintiffs sent letters to Gobourne requesting documentation to verify the address information provided during his EUO. NYSCEF Doc. No. 16. Gobourne failed to respond and, consequently, plaintiffs denied the Medical Provider Defendants' bills. NYSCEF Doc. No. 46, 1.

On September 9, 2020, plaintiffs commenced the instant action, suing the Medical Provider Defendants and Gobourne, seeking a declaratory judgment, pursuant to CPLR 3017(b), defining, inter alia, the rights, duties, and legal relationships between the plaintiffs and defendants. NYSCEF Doc. Nos. 1, 43.

In a Decision and Order dated January 10, 2022, Justice Verna L. Saunders granted plaintiffs' motion for a default judgment against various non-answering defendants but denied a default judgment against Joshua Rocker MD ("Rocker") because plaintiffs had failed to submit an affidavit of his non-military status. NYSCEF Doc. No. 23.

On December 20, 2022, plaintiffs moved for summary judgment against the remaining defendants. NYSCEF Doc. No. 25.

On March 27, 2023, this Court denied plaintiffs' motion for summary judgment with leave to re-file with an affidavit from someone with personal knowledge who "could demonstrate that Gobourne failed to satisfy his post-EUO obligations." NYSCEF Doc. No. 38.

#### The Instant Motion

On June 7, 2023, plaintiffs have again moved for summary judgment, against Dos Manos Chiropractic PC, Medaid Radiology LLC, Metro Pain Specialists PC, Rising Lotus Acupuncture PC, and New York City Fire Department ("Answering Defendants") as well as for a default judgment against Rocker. NYSCEF Doc. No. 54. Plaintiffs argue they are not obligated to provide coverage because Gobourne failed to comply with conditions precedent to coverage. Id. Plaintiffs also argue that they previously made a prima facie case for a default judgment against Rocker in their August 11, 2021 motion and that they have since provided an affidavit showing Rocker was not an active member of the military. NYSCEF Doc. Nos. 23, 42, 45.

In opposition, defendants argue that plaintiffs have not established a prima facie case because, inter alia, the only evidence of Gobourne's failure to comply with plaintiffs' post-EUO verification demands is in the form of an attorney affirmation. NYSCEF Doc. No. 48.

#### Discussion

In order to obtain summary judgment, the "movant must establish its defense or cause of action sufficiently to warrant a court's directing judgment in its favor as a matter of law. The party opposing the motion, on the other hand, must produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which the opposing claim rests' [M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient' for this purpose." Gilbert Frank Corp. v Fed. Ins. Co., 70 NY2d 966, 967 (1988) (internal citations omitted).

In New York State, an insurer presented with No-Fault benefit claims has the right to request "any additional verification required by the insurer to establish proof of claim". Regulation 68, NY Comp. Codes R. & Regs. Tit. 11 §65-3.5(b).

On October 23, 2019, one day after Gobourne's EUO, and again on November 25, 2019, plaintiffs properly and timely requested additional verification; they received no response. NYSCEF Doc. No. 54.

Plaintiffs' counsel's affirmation of the mailings and lack of response is sufficient evidence of plaintiffs' standard business and mailing practices and procedures. Thus, plaintiffs have demonstrated that the requests for documents were mailed and sent properly. Furthermore, plaintiffs have remedied their default judgment motion against Rocker by submitting an affidavit of non-military service on behalf of Rocker, pursuant to CPLR 3215(g)(4)(iii).

This Court has considered defendants' other arguments and finds them to be unavailing and/or non-dispositive.

Conclusion

Thus, the instant motion of Liberty Mutual Insurance Company and LM General Insurance Company is hereby granted as against Dos Manos Chiropractic PC, Medicaid Radiology LLC, Metro Pain Specialists PC, Rising Lotus Acupuncture PC, New York City Fire Department, and Joshua Rocker MD. The Clerk is directed to enter judgment declaring (1) that plaintiffs have no duty to provide coverage arising out of the July 5, 2019 Incident in which defendant Jahmawi Gobourne was allegedly injured; (2) permanently dismissing all pending litigation and arbitration arising out of the Incident; (3) barring the submission of any new claims arising out of the Incident; and (4) that plaintiffs' denial of the earlier bills was valid.



7/24/2023  
DATE

ARTHUR F. ENGORON, 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
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	<input type="checkbox"/> REFERENCE