

Liberty Mut. Ins. Co. v Ezra Supply Inc.

2024 NY Slip Op 32624(U)

July 16, 2024

Supreme Court, New York County

Docket Number: Index No. 654848/2018

Judge: Debra A. James

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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. DEBRA A. JAMES PART 59

Justice

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LIBERTY MUTUAL INSURANCE COMPLANY, LIBERTY
MUTUAL FIRE INSURANCE COMPANY, THE FIRST
LIBERTY INSURANCE CORPORATION, LIBERTY
MUTUAL MID-ATLANTIC INSURANCE COMPANY, and
LIBERTY INSURANCE CORPORATION,

Plaintiff,

- v -

EZRA SUPPLY INC.,

Defendant.

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INDEX NO. 654848/2018

MOTION DATE 07/09/2021

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81

were read on this motion to/for JUDGMENT - SUMMARY.

ORDER

Upon the foregoing documents, it is

ORDERED that the motion of the plaintiffs Liberty Mutual Insurance Company, Liberty Mutual First Insurance Company, The First Liberty Insurance Corporation, Liberty Mutual Mid-Atlantic Insurance Company and Liberty Insurance Corporation to renew their motion for summary judgment is granted to the extent that plaintiffs are entitled to a declaratory judgment in their favor as to reimbursement for 15 additional claims totaling \$12,347.38 submitted by defendant EZRA SUPPLY INC.; and it is further

ADJUDGED and DECLARED that the plaintiffs are not obligated to pay no-fault benefits to the defendant Ezra Supply Inc. in

connection with 15 additional claims totaling \$12,347.38 submitted by the defendant; and it is further

ADJUDGED AND DECLARED that all actions, proceedings or arbitrations commenced by the defendant Ezra Supply Inc. arising from the 15 additional claims totaling \$12,347.38 submitted by the defendant at issue in this action are permanently stayed, and that the defendant is enjoined from commencing any such further actions, proceedings or arbitrations based upon such claims.

DECISION

For a full recitation of the relevant facts, please see this court's prior decision, dated August 27, 2020, (the "Decision"). (NYSCEF Doc. No. 40).

In the Decision, the court granted the motion of plaintiffs Liberty Mutual Insurance Company, Liberty Mutual First Insurance Company, The First Liberty Insurance Corporation, Liberty Mutual Mid-Atlantic Insurance Company and Liberty Insurance Corporation (collectively "Liberty") for summary judgment against the defendant Ezra Supply Inc. ("Ezra") as to claims 1-3, 12 and 22-35, with leave to renew with respect to claims 4-11 and 13-21. Id.

In the instant motion, upon completion of discovery and filing of the note of issue and certificate of readiness, Liberty moves to renew, submitting additional evidence related to claims 4-9 and 13-21, specifically examination under oath ("EUO") scheduling letters. Such letters establish plaintiffs provided Ezra with notice of the EUOs and an opportunity to respond and attend. The

EUO scheduling letters submitted by Liberty related to claims 4-9 and 13-21 are identical to those sent concerning claims 1-3, 12 and 22-35, which Liberty appended to its prior motion for summary judgment. Liberty concedes that it is not entitled to summary judgment on claims 10 and 11.

Ezra asserts nearly identical arguments that it previously raised, specifically, that: (1) the affirmation of Nicole M. Bynum, Esq. is inadmissible; (2) Liberty's affidavits are improperly notarized; (3) Liberty's documents lack a proper foundation; (4) Liberty fails to establish its EUO no-show cause of action; (5) Liberty failed to request two EUOs for each bill in dispute; (6) the EUOs were not timely scheduled; (7) the EUOs were not properly mailed; (8) Liberty's follow-up requests were untimely; (9) Liberty fails to establish that Ezra failed to appear for EUOs; (10) Liberty failed to establish a reasonable basis for the EUOs; and (10) Liberty improperly and untimely issued denials.

Ezra's opposition to the motion fails to include any new evidence and ignores this court's prior determinations. Its opposition merely recycles defenses that were already rejected by this court with respect to the admissibility of documents, the appropriateness of Liberty's policies and procedures with respect to the EUO requests and denials, and the propriety and timeliness of Liberty's denials.

Liberty's additional submissions satisfy its prima facie burden on summary judgment by establishing the failure of Ezra to appear for scheduled EUOs. Furthermore, the EUOs were requested

according to the time-frames and procedures delineated by the no-fault regulations. Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC, 82 AD3d 559, 560 (1st Dept 2011).

Debra A. James

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7/16/2024

DATE

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE