

Liberty Mut. Ins. Co. v DeJoie

2024 NY Slip Op 32711(U)

August 2, 2024

Supreme Court, New York County

Docket Number: Index No. 653141/2023

Judge: Lori S. Sattler

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 02M

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LIBERTY MUTUAL INSURANCE COMPANY, LM
GENERAL INSURANCE COMPANY,

Plaintiff,

- v -

JUDITH DEJOIE, ABLE CHIROPRACTIC PC, ATLANTIS
SURGERY CENTER LLC, AURORA RN
COMPREHENSIVE SERVICES PLLC, BITACHON
DIAGNOSTICS INC, CHIROPRACTIC CARE OF KINGS
COUNTY, PC, CENTURION ANESTHESIA SURGICAL
CENTERS LLC, CONRAD F CEAN MD PLLC, FIVE CREST
DIAGNOSTIC MEDICAL PC, GRACE MEDICAL HEALTH
PROVIDER PC, HEALTHCARE MEDICAL SERVICES
PLLC, INTEGRATIVE PSYCHOLOGICAL
PROFESSIONAL SERVICE, PLLC, LSL MOBILE INC,
MACINTOSH MEDICAL, PC, NETRX INC, NYC CARE PT,
PC, OLUBUSOLA BRIMMO, MD LLC, PAL MEDICAL
SUPPLIES INC, PLEX HEALTH INC, Q PHARMACY RX
INC, SEDATION VACATION PERIOPERATIVE
MEDICINE, PLLC, STAND UP MRI OF BROOKLYN,
PC, STEVEN WONG, MD, UNISOFT LLC, Z MAX
PHARMACY INC

Defendant.

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HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34

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

This declaratory judgment action stems from a motor vehicle accident that occurred on November 16, 2021 in Brooklyn. Defendant-Claimant Judith DeJoie (“Claimant”) was driving a vehicle insured under a policy issued by Liberty Mutual Insurance Company and LM General Insurance Company (“Plaintiffs”). Plaintiffs now move for a default judgment against all non-answering Defendants in this action based on Claimant’s failure to cooperate with document demands made after her Examination Under Oath (“EUO”). Plaintiffs seek a permanent stay of

any arbitration or court proceeding brought by the non-answering defendants for No-Fault benefits related to the accident, a permanent injunction barring any such arbitration or court proceeding, and a declaration that their denial of No-Fault claims related to the accident are valid. The non-answering defendants do not oppose this motion and have not appeared in this action.

A party is entitled to judgment pursuant to CPLR 3215 where it files proof of service of its Summons and Complaint, proof of the facts constituting its claim, and proof of default (CPLR 3215[f]; *Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 [1st Dept 2016]). Plaintiffs have properly filed proof of service of the Summons and Complaint and proof of the non-answering defendants' default. As to the facts constituting their claim, Plaintiffs maintain that Claimant failed to respond to post EUO document demands and that her failure to do so violated a condition precedent to coverage under the applicable policy. 11 NYCRR 65-1.1 requires a claimant to fully comply with the terms of coverage in a No-Fault policy as a condition precedent to all claims against an insurance company under such policy. An insurer may deny coverage based upon a claimant's failure to comply with a condition precedent to coverage under the applicable policy (*see Hertz Corp. v Active Care Med. Supply Corp.*, 124 AD3d 411 [1st Dept 2015]). Failure to cooperate with a carrier's investigation into a no-fault claim warrants a declaration of noncoverage (*State Farm Mut. Auto. Ins. Co. v All City Family Healthcare Ctr., Inc.*, 206 AD3d 584, 585 [1st Dept 2022]).

Here, Plaintiffs show that Claimant attended her EUOs on April 5 and June 3, 2022 (NYSCEF Doc. No. 25) and that Plaintiffs served post-EUO document demands on Claimant on June 27, 2022 (NYSCEF Doc. No. 26). They further establish that Claimant failed to respond to the post-EUO document demands (NYSCEF Doc. No. 27). The Court finds that Plaintiffs have

established their entitlement to default judgment against the non-answering defendants based on Claimant's failure to comply with a condition precedent to coverage.

Accordingly, it is hereby:

ORDERED, ADJUDGED, and DECLARED that Claimant breached a condition precedent to coverage as established by the No-Fault Regulations and the subject policy of insurance and accompanying No-Fault endorsement by failing to respond to post-EUO document demands; and it is further

ORDERED, ADJUDGED and DECREED that Plaintiffs' denials of all claims for No-Fault benefits by the Non-Answering Defendants stemming from the alleged occurrence of November 16, 2021 involving Judith DeJoie are deemed valid; and it is further

ORDERED, ADJUDGED, and DECLARED that Plaintiffs owe no duty to provide any No-Fault reimbursements to Judith DeJoie; Able Chiropractic PC; Atlantis Surgery Center LLC; Aurora RN Comprehensive Services PLLC; Bitachon Diagnostics Inc.; Centurion Anesthesia Surgical Centers LLC; Conrad F Cean MD PLLC; Five Crest Diagnostic Medical PC; LSL Mobile Inc.; Olubusola Brimmo, MD LLC; Sedation Vacation Perioperative Medicine, PLLC; Stand Up MRI of Brooklyn, PC; Steven Wong, MD; Unisoft LLC; and Z Max Pharmacy Inc for any claim or bill submitted by or on behalf of Judith DeJoie, as she breached a condition precedent to coverage as established by the subject policy of insurance and the accompanying No-Fault endorsement by failing to respond to post-EUO document demands; and it is further

ORDERED, ADJUDGED and DECREED that each and every part of any arbitration or court hearing brought by the Non-Answering Defendants for No-Fault benefits stemming from the alleged occurrence of November 16, 2021 involving Judith DeJoie is permanently stayed; and it is further

ORDERED, ADJUDGED and DECREED that the Non-Answering Defendants are permanently enjoined from bringing any arbitration or court hearing brought by the Non-Answering Defendants for No-Fault benefits stemming from the alleged occurrence of November 16, 2021 involving Judith DeJoie; and it is further

ORDERED that the Clerk is directed to enter judgment as against Judith DeJoie; Able Chiropractic PC; Atlantis Surgery Center LLC; Aurora RN Comprehensive Services PLLC; Bitachon Diagnostics Inc.; Centurion Anesthesia Surgical Centers LLC; Conrad F Cean MD PLLC; Five Crest Diagnostic Medical PC; LSL Mobile Inc.; Olubusola Brimmo, MD LLC; Sedation Vacation Perioperative Medicine, PLLC; Stand Up MRI of Brooklyn, PC; Steven Wong, MD; Unisoft LLC; and Z Max Pharmacy Inc.

A Preliminary Conference with the remaining parties shall be held on November 6, 2024 at 9:30 a.m. at 60 Centre Street, Room 212.

8/2/2024
DATE



LORI S. SATTLER, 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"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE