

Liberty Mut. Ins. Co. v Bharath

2024 NY Slip Op 33027(U)

August 26, 2024

Supreme Court, New York County

Docket Number: Index No. 653473/2022

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 -

MICHAEL BHARATH, KRALLE CHERRY, ATHENA
CHIROPRACTIC PC, AVENUE MEDICAL CARE
PC, FAMILY HEALTH NP PC, FINESSE CARE PHYSICAL
THERAPY P.C., GET WELL PHARMACY OF BRONX INC,
MACINTOSH MEDICAL PC, MARK VINE MD,
METROPOLITAN DME CORP, MW PSYCHOLOGY
PC, NALATOR, INC, NATURALIFE CHIROPRACTIC
PC, REFUA RX INC, RIGHT MOTION PT PC, WALMED
EQUIPMENT LLC, WELLNESS MEDICAL IMAGING PC

Defendant.

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INDEX NO. 653473/2022

MOTION DATE 03/08/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

HON. LORI S. SATTLER:

The following e-filed documents, listed by NYSCEF document number (Motion 002) 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72

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

This declaratory judgment action arises out of a motor vehicle accident involving individual defendants Michael Bharath and Kralle Cherry (“Claimants”) on October 5, 2021 in a vehicle insured by Plaintiffs Liberty Mutual Insurance Company and LM General Insurance Company (“Plaintiffs”). Claimants purportedly sought medical treatment from the other defendants (“medical provider defendants”), which then submitted bills to Plaintiffs seeking reimbursement under the vehicle’s No-Fault policy. As part of their claims investigation, Plaintiffs requested Claimants to submit to examinations under oath (“EUOs”). Claimants failed to appear for their EUOs and Plaintiffs denied the bills submitted by the medical provider

defendants due to Claimants' violation of a condition precedent to coverage under the applicable No-Fault policy.

Plaintiffs then commenced this action seeking a declaratory judgment that it has no obligation to reimburse the medical provider defendants under the policy. Default judgment was granted against Claimants and certain medical provider defendants (NYSCEF Doc. No. 34) and the action discontinued as against other medical provider defendants (NYSCEF Doc. Nos. 58, 75). Plaintiffs now move for summary judgment against the remaining medical provider defendants ("Answering Defendants"). The Answering Defendants oppose the motion.

On a motion for summary judgment, a movant must make a prima facie showing that they are entitled to judgment as a matter of law by tendering sufficient evidence to demonstrate the absence of any issue of material fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). After the movant makes this showing, "the burden shifts to the party opposing the motion . . . to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact such that trial of the action is required" (*id.*). The Court must view the facts "in the light most favorable to the non-moving party" (*Vega v Restani Corp.*, 18 NY3d 499, 503 [2012]).

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 submitted to an insurer. A claimant's failure to submit to an EUO constitutes a breach of a condition precedent to coverage under a No-Fault policy and vitiates the policy (*Hertz Corp. v Active Care Med. Supply Corp.*, 124 AD3d 411 [1st Dept 2015]; *Unitrin Advantage Ins. Co. v Bayshore Physical Therapy, PLLC*, 82 AD3d 559, 560 [1st Dept 2011]). An insurer must establish that it requested EUOs in accordance with the procedures and time frames in the No-Fault regulations (11 NYCRR § 65-3.5) in order to

deny a claim where a claimant fails to appear for an EUO (*Unitrin*, 82 AD3d at 560; *American Tr. Ins. Co. v Longevity Med. Supply, Inc.*, 131 AD3d 841, 841-42 [1st Dept 2019]). A request for an EUO is timely when it is made within 15 days of the receipt of an NF-3 form such as a medical provider claim (*Unitrin Direct Ins. Co. v Beckles*, 188 AD3d 620 [1st Dept 2020]) and may also be sought before an insurer receives an NF-3 (*Mapfre Ins. Co. of N.Y. v Manoo*, 140 AD3d 468, 469 [1st Dept 2016]).

Plaintiffs set forth their prima facie case for summary judgment by submitting documentation of the EUO requests sent to Claimants on November 5, 2021 and proof of Claimants' failure to appear at their respective EUOs (NYSCEF Doc. Nos. 51-53). They further submit copies of Claimants' NF-2 applications for No-Fault benefits (NYSCEF Doc. No. 49) and the Answering Defendants' NF-3 claim forms. These documents establish that Plaintiffs timely requested EUOs of Claimants in accordance with the No-Fault regulations. The Answering Defendants fail to show the existence of any material of fact in their opposition, as the record shows that Plaintiffs either requested EUOs prior to receiving NF-3 forms or within 15 days of receipt. Plaintiffs' denial of the Answering Defendants' No-Fault claims was therefore proper and summary judgment in Plaintiffs' favor is warranted (*see Mapfre*, 140 AD3d at 469; *Unitrin*, 188 AD3d at 620).

Accordingly, it is hereby:

ORDERED that the motion is granted; and it is further

ORDERED, ADJUDGED, and DECLARED that Claimants 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 appear at their respective EUOs; 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 October 5, 2021 involving Michael Bharath and Kralle Cherry are valid; and it is further

ORDERED, ADJUDGED, and DECLARED that Plaintiffs owe no duty to provide any No-Fault reimbursements to Macintosh Medical PC; Metropolitan DME Corp.; Naturalife Chiropractic PC; Refua RX Inc; and Right Motion PT PC for any claim or bill submitted by or on behalf of Michael Bharath and Kralle Cherry, as they breached a condition precedent to coverage by failing to appear at their respective EUOs; and it is further

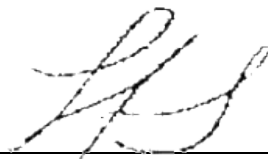
ORDERED, ADJUDGED and DECREED that each and every part of any arbitration or court hearing brought by Macintosh Medical PC; Metropolitan DME Corp.; Naturalife Chiropractic PC; Refua RX Inc; and Right Motion PT PC for No-Fault benefits stemming from the alleged occurrence of October 5, 2021 involving Michael Bharath and Kralle Cherry; and it is further

ORDERED that the Clerk is directed to enter judgment as against Macintosh Medical PC; Metropolitan DME Corp.; Naturalife Chiropractic PC; Refua RX Inc; and Right Motion PT PC.

This constitutes the Decision and Order of the Court.

8/26/2024

DATE



LORI S. SATTLER, 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