

**Hereford Ins. Co. v All City Family Healthcare**

2024 NY Slip Op 33546(U)

October 7, 2024

Supreme Court, New York County

Docket Number: Index No. 153734/2022

Judge: Judy H. Kim

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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. JUDY H. KIM PART 04**

*Justice*

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HEREFORD INSURANCE COMPANY,

Plaintiff,

- v -

ALL CITY FAMILY HEALTHCARE, AMERICAN MEDICAL INITIATIVES PC, BAY RIDGE ORTHOPEDIC ASSOC., COME CHIROPRACTIC PC, DR. SIMEON ISAACS, EAST COAST MED GROUP INC., ELENA BORISOVNA STYBEL, ERIC KENWORTHY, GOOD MEDICA INC., HEADLAM MEDICAL PROFESSIONAL CORP., IDEAL CARE PHARMACY INC., ISLAND AMBULATORY SURGERY CENTER, INTEGRATIVE FAMILY HEALTH NP PLLC, INTERVENTIONAL PHYSICAL MEDICINE AND REHAB OF NEW YORK PLLC, JOSEPH RAI A MD PC, LENCO DIAGNOSTIC LABORATORY, LORRAINE RIOTTO, LR MEDICAL PLLC, MARK H. VINE, NEXT STEP HEALING INC., PSG PSYCHOLOGY PLLC, QUALITY CARE RX INC., REHAB TIME PT PC, RIGHT CHOICE SUPPLY INC., SEDATION VACATION PERIOPERATIVE MEDICINE PLLC, SINAI DIAGNOSTICS LLC, WIZARD COMPUTER SERVICES, INC., XPERT SUPPLY CORP., YUREV MICHAEL, DUCKENS MICHEL, JOSEPH ERBENS, YVENOL JUSTE,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 112, 113, 114, 115, 116, 118, 121

were read on this motion to AMEND CAPTION/PLEADINGS.

**DECISION + ORDER ON MOTION**

Upon the foregoing documents, plaintiff's motion for leave to amend the pleadings pursuant to CPLR 3025(b) is granted.

Plaintiff commenced this action on April 29, 2022, seeking a declaratory judgment that plaintiff is not obligated to pay any no-fault benefits for the medical treatment of defendants Duckens Michel, Joseph Erbens, and Yvenol Juste for injuries allegedly sustained in a motor vehicle collision on August 30, 2021 (NYSCEF Doc. No. 1 [Complaint]).

On February 7, 2023, plaintiff moved for a default judgment against defendants Come Chiropractic PC, East Coast Med Group Inc., Good Medica Inc., Island Ambulatory Surgery Center, Interventional Physical Medicine and Rehab Of New York PLLC, Joseph Raia MD PC, Lenco Diagnostic Laboratory, Next Step Healing Inc., Quality Care Rx Inc., Right Choice Supply Inc., Sedation Vacation Perioperative Medicine PLLC, Sinai Diagnostics LLC, and Wizard Computer Services, Inc., which motion was granted on March 13, 2023 (NSYCEF Doc. No. 97).

Plaintiff now moves to amend the pleadings to include Grace Medical Health Provider, PC and Northeast Medical Devices LLC as additional defendants.

### **DISCUSSION**

As an initial matter, since plaintiff has, after filing this motion, reached a settlement with defendant Northeast Medical Devices LLC and preemptively “discontinued” this action as against it (NYSCEF Doc. No. 118), the branch of its motion to amend its pleadings to add Northeast Medical Devices LLC as a defendant is denied as moot.

However, the remainder of plaintiff’s motion, to amend its pleadings to add Grace Medical Health Provider, PC as a defendant, is granted. “Leave to amend pleadings under CPLR 3025(b) should be freely given and denied only if there is prejudice or surprise resulting directly from the delay or if the proposed amendment is palpably improper or insufficient as a matter of law” (McGhee v Odell, 96 AD3d 449, 450 [1st Dept 2012] [internal citations and quotations omitted]). and the amendments sought is neither palpably improper nor insufficient as a matter of law.

Accordingly, it is

**ORDERED** that plaintiff’s motion for leave to amend the complaint to add is granted, in part, and the action shall bear the following caption:<sup>1</sup>

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<sup>1</sup> The proposed Amended Summons and Complaint submitted by plaintiff in connection with this motion includes the discontinued defendants All City Family Healthcare, Dr. Simeon Isaacs, Elena Borisovna Stybel Md, Eric Kenworthy,

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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HEREFORD INSURANCE COMPANY,

Plaintiff,

Index No. 153734/2022

-against-

AMERICAN MEDICAL INITIATIVES PC, BAY RIDGE  
ORTHOPEDIC ASSOC, COME CHIROPRACTIC PC,  
EAST COAST MED GROUP INC., GOOD MEDICA INC.,  
ISLAND AMBULATORY SURGERY CENTER,  
INTERVENTIONAL PHYSICAL MEDICINE AND  
REHAB OF NEW YORK PLLC, JOSEPH RAIA MD PC,  
LENCO DIAGNOSTIC LABORATORY,  
NEXT STEP HEALING INC., QUALITY CARE RX INC.,  
RIGHT CHOICE SUPPLY INC., SEDATION VACATION  
PERIOPERATIVE MEDICINE PLLC, SINAI DIAGNOSTICS LLC,  
WIZARD COMPUTER SERVICES, INC. MARK H. VINE,  
DUCKENS MICHEL, JOSEPH ERBENS, YVENOL JUSTE, and  
GRACE MEDICAL HEALTH PROVIDER, PC,

Defendants.

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and it is further

**ORDERED** that plaintiff shall serve a Supplemental Summons and Amended Verified Complaint, amended to reflect the above caption, along with a copy of this decision and order with notice of entry, on Grace Medical Health Provider, PC, within twenty days of the date of this decision and order, in accordance with the CPLR; and it is further

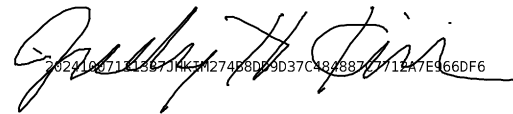
**ORDERED** that this Supplemental Summons and Amended Verified Complaint, amended to reflect the above caption, shall be deemed served upon all parties who have previously appeared in the action upon plaintiff's service of a copy of this decision and order, with notice of entry, on those parties; and it is further

MD, Headlam Medical Professional Corp., Ideal Care Pharmacy Inc., Integrative Family Health NP PLLC, Lorraine Riotto MD, LR Medical PLLC, PSG Psychology PLLC, Rehab Time Pt PC, Xpert Supply Corp., and Yurev Michael.

**ORDERED** that counsel for plaintiff shall serve a copy of this decision and order, with notice of entry, upon the County Clerk (60 Centre Street, Room 141B) and the Clerk of the General Clerk’s Office (60 Centre Street, Room 119), who are directed to mark the court’s records to reflect the amended caption set forth above; and it is further

**ORDERED** that such service upon the County Clerk and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address ([www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh))).

This constitutes the decision and order of the Court.



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HON. JUDY H. KIM, J.S.C.

10/7/2024

DATE

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