SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHRYN E. FREED** **PART** **IAS MOTION 2EFM**

Justice

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STATE FARM FIRE AND CASUALTY COMPANY,

Plaintiff,

- v -

ALL COUNTY, LLC,BMHC HOSPITAL, BRANCH OF LIFE ACUPUNCTURE, P.C.,BROOKDALE HOSPITAL MEDICAL CENTER, BROWNSVILLE CHIROPRACTIC, P.C.,EXCELLENT CHOICE PHARMACY, CORP., HARMONIZED ACUPUNCTURE, P.C.,MANHATTANS HANDS OF HOPE, P.T., P.C.,METRO PAIN SPECIALISTS, P.C.,MMA PHYSICAL THERAPY, P.C.,MYRTLE DME NYC, INC., NORTHERN MEDICAL CARE, P.C.,REHAB CARE PHYSICAL THERAPY, P.C.,RGN GROUP, INC.,RKD RX CORP., SMART CHOICE MEDICAL, P.C.,SPINE CARE OF NEW JERSEY, P.C.,DOMINIQUE CRAWFORD, SHADASHIA RICHARDSON, and BILLY WHITE,

Defendants.

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INDEX NO. 162179/2018

MOTION DATE 11/23/2019

MOTION SEQ. NO. 001

DECISION, ORDER AND JUDGMENT

The following e-filed documents, listed by NYSCEF document number (Motion 001) 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61

were read on this motion to/for JUDGMENT - DEFAULT

In this declaratory judgment action, plaintiff State Farm Fire and Casualty Company ("State Farm") moves, pursuant to CPLR 3215, for a default judgment against defendants ALL COUNTY, LLC, BMHC HOSPITAL, BRANCH OF LIFE ACUPUNCTURE, P.C., BROOKDALE HOSPITAL MEDICAL CENTER, EXCELLENT CHOICE PHARMACY, CORP., HARMONIZED ACUPUNCTURE, P.C., MANHATTANS HANDS OF HOPE, P.T., P.C., METRO PAIN SPECIALISTS, P.C., MMA PHYSICAL THERAPY, P.C., MYRTLE DME NYC, INC., NORTHERN MEDICAL CARE, P.C., REHAB CARE PHYSICAL THERAPY, P.C., RGN GROUP, INC., RKD RX CORP., SMART CHOICE MEDICAL, P.C., SPINE CARE

OF NEW JERSEY, P.C., (hereinafter collectively the "medical provider defendants"), and DOMINIQUE CRAWFORD ("Crawford") and SHADASHIA RICHARDSON ("Richardson"). After a review of plaintiff's motion papers, as well as the relevant statutes and case law, the motion, which is unopposed, is decided as follows.

FACTUAL AND PROCEDURAL BACKGROUND

This action arises from a motor vehicle accident ("the accident", "the incident", or "the collision") on February 6, 2018, in which Crawford, Richardson and defendant Billy White ("White") (collectively "the claimants" or "the individual defendants") were allegedly injured. Doc. 1. According to the police report, the vehicle insured by State Farm, which was owned and operated by Crawford, was involved in a collision with another vehicle on Rockaway Parkway in Brooklyn, New York.[1] The police report (Doc. 49) contained conflicting narratives regarding how the collision occurred and noted that Crawford was injured in the accident but that Richardson and White were not. Further, the report noted that the airbags in the Crawford's vehicle did not deploy.

State Farm was notified that all three claimants sustained serious bodily injuries as a result of the collision and it assigned claim number 52-2908-Z05 to all claims arising from the incident. The medical provider defendants thereafter submitted no-fault claims allegedly related to the accident, and to totaling over $40,000.00, to State Farm.

Pursuant to the affirmation of State Farm's attorney, David Boucher, Jr., Esq., a member of the law firm Rubin, Fiorella, Friedman and Mercante, LLP (Doc. 46), State Farm's investigation of the accident revealed several inconsistencies regarding how the accident occurred, as well as facts suggesting that the alleged injuries did not arise from the collision, including, but not limited

[1] Crawford's vehicle was insured under State Farm policy number 2529-128-52.

to, the fact that: Crawford procured the policy just 10 days before the collision; the check used to procure the insurance bounced; Crawford did not have a valid driver's license at the time she procured the policy; and that neither Richardson nor White reported being injured at the scene.

Based on the foregoing facts, plaintiff, pursuant to its rights under the No Fault Regulations, timely requested examinations under oath ("EUOs") of the claimants. Plaintiff asserts that all of the EUO scheduling letters complied with 11 NYCRR 65-3.5(b) and 11 NYCRR 65-3.6(b). Docs. 50, 51 and 52. Despite the proper demands they received, Richardson and White never appeared for their scheduled EUOs. Crawford appeared for her EUO on September 18, 2018, the third date for which it was scheduled. Doc. 53. However, State Farm asserts that Crawford's testimony contained numerous inaccuracies and inconsistencies, leading it to conclude that the collision was not an accident but rather was an intentional occurrence. See Id,¶ 15, a-g. Most notable of the inconsistencies at the EUO were, *inter alia*, that Crawford could not remember the vehicle she was driving and misidentified it, even though it had been purchased less than eight months before she testified, and she had personally registered it and insured it even before she had it inspected. She also did not remember how the accident happened or the correct names of her passengers. Given the foregoing facts, State Farm maintains that it has a founded belief that the injuries claimed did not arise from the accident. Doc. 46, Affidavit of Christina Mingucci. State Farm further maintains that the accident was intentional, which would be a violation of the policy and negate any claims for no-fault benefits related to the collision.

On December 28, 2018, State Farm commenced the captioned declaratory judgment action by filing a summons and complaint. Doc. 1. As a fourth cause of action, State Farm alleged that it was not obligated to provide no-fault benefits to the claimants because it had a founded belief that their injuries did not arise from the collision. After filing the summons and complaint, plaintiff

served process on all defendants except White, whom it was concededly unable to serve. Docs. 4-22, 34. Only Brownsville Chiropractic, PC and New York City Health & Hospitals Corporation answered the complaint.[2]

State Farm now moves, pursuant to CPLR 3215, for a default judgment against the defendants named above. Doc. 45. In support of the motion, it submits, inter alia, the summons and complaint; affidavits of service on all defendants against which/whom a default is demanded; the police report; an attorney affirmation establishing that, of all defendants served which are still parties, only Brownsville Chiropractic answered the complaint; EUO scheduling letters; an attorney affirmation attesting to the fact that White and Richardson failed to appear for EUOs; Crawford's EUO transcript; the affidavit of Christina Mingucci, a claims specialist for the company, in which she discusses the findings of State Farm's investigation of the accident; and non-military affidavits for Crawford and Richardson.

In support of the motion, State Farm, through its attorney, argues that it is entitled to a default judgment on the ground that each of the claimants failed to appear for EUOs on two occasions; that the accident was intentionally caused; and that State Farm has a founded belief that the alleged injuries did not occur due to the alleged accident.

In her affidavit in support of the motion, Mingucci maintains that, following the incident, State Farm sought to conduct the EUOs of the claimants because it questioned the legitimacy of the claims based on the fact that: Crawford obtained the policy just 10 days before the collision; after the collision, the check sent by Crawford to pay the premium bounced; Crawford did not have a valid driver's license at the time of the accident; and neither Richardson nor White appeared to

[2] By Stipulation of Discontinuance and Release filed June 18, 2019, State Farm discontinued the action as against New York City Health & Hospitals Corporation. Doc. 38.

be injured following the accident. According to Mingucci, Richardson and White failed to appear for EUOs. When Crawford finally appeared for an EUO after three requests for her to do so, she testified, inter alia, that: 1) she could not remember the type of car she was driving at the time of the accident, which was suspicious given that she had purchased the vehicle less than 8 months before; 2) she did not have a driver's license when she purchased the vehicle; 3) she paid the policy premium via an automatic bank withdrawal, despite the fact that the only premium payment made on the policy was by a check, which bounced; 4) her passengers at the time of the collision were named Eric and Cece, despite the fact that the police report indicates that the two passengers were Richardson and White; and 5) her memory of the event was poor because the vehicle's air bags deployed, despite the fact that the police report reflects that the air bags did not deploy. Mingucci also determined that Crawford's account of the accident was illogical and contradicted the police report. Given Crawford's testimony, maintains Mingucci, State Farm had a founded belief that the accident was intentional and that the claimants' injuries were not caused by the alleged incident.

LEGAL CONCLUSIONS:

CPLR 3215(a) provides, in pertinent part, that "[w]hen a defendant has failed to appear, plead or proceed to trial..., the plaintiff may seek a default judgment against him." It is well settled that in order to establish its entitlement to a default judgment pursuant to CPLR 3215, a party must submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting party's default in answering or appearing. *See Gantt v North Shore-LIJ Health Sys.*, 140 AD3d 418 (1st Dept 2016).

Here, State Farm has established service of process on all defendants against which/whom it seeks a default judgment. The attorney affirmation submitted in support of the instant motion establishes that, with the exception of Brownsville Chiropractic, no party served which is still a defendant in this action answered or otherwise appeared.

State Farm has also established the facts constituting the claim. An insurer may disclaim coverage based upon "the fact or founded belief that the alleged injury does not arise out of an insured incident." *Central Gen. Hosp. v Chubb Grp. of Ins. Co.*, 90 NY2d 195, 199 (1997). In meeting this burden, a no-fault insurer is "not required to establish that the subject collision was the product of fraud, which would require proof of all elements of fraud, including scienter, by clear and convincing evidence." *V.S. Med. Servs., P.C. v Allstate Ins. Co.*, 25 Misc. 3d 39, 41 (App Term, 2d Dept 2009) (internal citation omitted). Rather, the no-fault insurer must demonstrate the facts elicited during an investigation that make up the founded belief. Circumstantial evidence may be used to prove such facts if a party's conduct "may be 'reasonably inferred' based upon 'logical inferences to be drawn from the evidence.'" *Benzaken v Verizon Communications, Inc.*, 21 AD3d 864, 865 (2d Dept 2005) (citation omitted). Here, as noted previously, Mingucci investigated the instant claim and, based on her investigation, which included Crawford's EUO testimony cited above, State Farm, as alleged in its fourth cause of action, had a founded belief that the injuries alleged by the claimants were not caused by the collision. Thus, State Farm is entitled to a default judgment against the non-appearing defendants.

Since a declaratory judgment is being granted in favor of State Farm as against virtually every defendant, and since discovery is still being conducted with respect to State Farm's claim against non-defaulting defendant Brownsville Chiropractic, this Court, in its discretion, severs the action to permit the expeditious entry of the declaratory judgment. Additionally, this Court

dismisses the action as against White, since he has never been served with process and State Farm has not moved to extend the time to serve him.

Given this result, it is unnecessary for this Court to reach the additional arguments raised by State Farm including, but not limited to, the propriety of its EUO demands.

Therefore, in light of the foregoing, it is hereby:

ORDERED that plaintiff's motion for leave to enter a default judgment against defendants ALL COUNTY, LLC, BMHC HOSPITAL, BRANCH OF LIFE ACUPUNCTURE, P.C., BROOKDALE HOSPITAL MEDICAL CENTER, EXCELLENT CHOICE PHARMACY, CORP., HARMONIZED ACUPUNCTURE, P.C., MANHATTANS HANDS OF HOPE, P.T., P.C., METRO PAIN SPECIALISTS, P.C., MMA PHYSICAL THERAPY, P.C., MYRTLE DME NYC, INC., NORTHERN MEDICAL CARE, P.C., REHAB CARE PHYSICAL THERAPY, P.C., RGN GROUP, INC., RKD RX CORP., SMART CHOICE MEDICAL, P.C., SPINE CARE OF NEW JERSEY, P.C., DOMINIQUE CRAWFORD, and SHADASHIA RICHARDSON is granted, and the Clerk is directed to enter judgment accordingly; and it is further

ADJUDGED and DECLARED that the plaintiff, State Farm Fire and Casualty Company, is not obligated to pay no-fault or other insurance benefits under Policy No. 2529-128-52 to defendants ALL COUNTY, LLC, BMHC HOSPITAL, BRANCH OF LIFE ACUPUNCTURE, P.C., BROOKDALE HOSPITAL MEDICAL CENTER, EXCELLENT CHOICE PHARMACY,

CORP., HARMONIZED ACUPUNCTURE, P.C., MANHATTANS HANDS OF HOPE, P.T., P.C., METRO PAIN SPECIALISTS, P.C., MMA PHYSICAL THERAPY, P.C., MYRTLE DME NYC, INC., NORTHERN MEDICAL CARE, P.C., REHAB CARE PHYSICAL THERAPY, P.C., RGN GROUP, INC., RKD RX CORP., SMART CHOICE MEDICAL, P.C., SPINE CARE OF NEW JERSEY, P.C., DOMINIQUE CRAWFORD, and SHADASHIA RICHARDSON in connection with a motor vehicle accident that allegedly occurred on February 6, 2018 (State Farm Claim Number 52-2908-Z05); and it is further,

ADJUDGED and DECLARED that the plaintiff, State Farm Fire and Casualty Company, is not obligated to reimburse defendants ALL COUNTY, LLC, BMHC HOSPITAL, BRANCH OF LIFE ACUPUNCTURE, P.C., BROOKDALE HOSPITAL MEDICAL CENTER, EXCELLENT CHOICE PHARMACY, CORP., HARMONIZED ACUPUNCTURE, P.C., MANHATTANS HANDS OF HOPE, P.T., P.C., METRO PAIN SPECIALISTS, P.C., MMA PHYSICAL THERAPY, P.C., MYRTLE DME NYC, INC., NORTHERN MEDICAL CARE, P.C., REHAB CARE PHYSICAL THERAPY, P.C., RGN GROUP, INC., RKD RX CORP., SMART CHOICE MEDICAL, P.C., and SPINE CARE OF NEW JERSEY, P.C. for medical and health-related services, treatment, and equipment that these defendants allegedly rendered to defendants DOMINIQUE CRAWFORD, SHADASHIA RICHARDSON and BILLY WHITE under State Farm Policy Number 2529-128-52 in connection with a motor vehicle accidents that allegedly occurred on February 6, 2018 (State Farm Claim Number 52-2908-Z05); and it is further

ORDERED that the action is severed, and shall continue against, defendant Brownsville Chiropractic, P.C.; and it is further

ORDERED that the complaint is dismissed as against defendant BILLY WHITE given that he has not been served with process, and plaintiff has not sought an extension of time in which to effectuate such service; and it is further

ORDERED that the remaining parties to this action are to appear for a previously scheduled compliance conference on November 26, 2019 at 80 Centre Street, Room 280, at 2:15 p.m.; and it is further

ORDERED that this constitutes the Decision, Order, and Judgment of the court.

11/6/2019
DATE

KATHRYN E. FREED, J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
	X	GRANTED		DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE