

**American Tr. Ins. Co. v Alpha Imaging Consultants,
PLLC**

2020 NY Slip Op 33110(U)

September 21, 2020

Supreme Court, New York County

Docket Number: 650326/2020

Judge: Nancy M. Bannon

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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. NANCY M. BANNON PART IAS MOTION 42EFM

Justice

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AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

ALPHA IMAGING CONSULTANTS, PLLC, BIG APPLE MANAGEMENT PLLC, BROOKLYN MEDICAL PRACTICE PC, COMMUNITY MEDICAL IMAGING, PC, NEW YORK CITY HEALTH AND HOSPITAL CORP, NEW YORK CITY HEALTH AND HOSPITAL CORP, ECLIPSE MEDICAL IMAGING P.C., FRIENDLY RX INC, NASSAU HEALTH CARE CORP, NORTH SHORE FAMILY CHIROPRACTIC, P.C, NYC MEDICAL & NEUROLOGICAL OFFICES PC, ORTHOPEDICS, SPINE & SPORTS MEDICINE, LLC, PHYSIOLOGIC ASSESSMENT SERVICES LLC, PMGT MEDICAL AND SURGICAL ASSOCIATE, STAND UP MRI OF BROOKLYN PC, UNICORN ACUPUNCTURE, PC, WELLNESS EXPRESS PT, PC, YANKEE NEUROPHYSIOLOGY PC

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 42, 43, 44, 45, 46, 47, 48, 49, 50

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

In this declaratory judgment action, the plaintiff insurer moves pursuant to CPLR 3215 for leave to enter a default judgment against the defendants, Alpha Imaging Consultants PLLC, Big Apple Pain Management PLLC, Brooklyn Medical Practice PC, Community Medical Imaging PC, New York City Health and Hospital Corp. d/b/a Coney Island Hospital Center, New York City Health and Hospital Corp. d/b/a Coney Island Medical Practice, Eclipse Medical Imaging PC, Friendly Rx Inc., Nassau Health Care Corp., North Shore Family Chiropractic PC, Orthopedics Spine & Sports Medicine LLC, Physiologic Assessment Services LLC, Stand Up MRI of Brooklyn, Unicorn Acupuncture PC, Wellness Express PT PC and Yankee Neurophysiology PC. The plaintiff seeks a declaration that the defendant medical providers are not entitled to no-fault benefits pursuant to article 51 of the Insurance Law with regard to a motor vehicle accident that is alleged to have occurred on October 15, 2018. The defendants

submitted claims for reimbursement under Claim Number 1042790-01, under a policy issued by the plaintiff to non-party Hector Roberto Tale Alvarado, Policy Number B607625, who claims to have been injured in the accident. The plaintiff asserts that there was no coverage. No opposition is submitted. The motion is granted inasmuch as the plaintiff has submitted proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the above defendants' failure to answer or appear. See CPLR 3215(f); Atlantic Cas. Ins. Co. v RJNJ Services, Inc., 89 AD3d 649 (2nd Dept. 2011).

The court notes that the plaintiff, by stipulation filed on July 17, 2020, withdrew this motion as against defendants New York City Health and Hospital Corp. d/b/a Coney Island Hospital Center and New York City Health and Hospital Corp. d/b/a Coney Island Medical Practice. Additionally, by Stipulation of Discontinuance filed on July 13, 2020, this action was discontinued as against defendant Orthopedics Spine & Sports Medicine LLC.

As to the facts constituting its claim, the plaintiff submits proof to demonstrate, *prima facie*, that it properly denied coverage on the subject claims on the basis that its own investigation revealed that the subject accident, to the extent it even occurred, did not cause the injuries alleged to be suffered by Alvarado. The plaintiff establishes that it properly denied coverage on the basis that it has a "founded belief" that the injuries for which Collins sought treatment did not arise from an insured event. See Central General Hosp. v Chubb Group of Ins. Cos., 90 NY2d 195 (1997); Zappone v Home Ins. Co., 55 NY2d 131 (1982); Mount Sinai Hosp. v Triboro Council, 263 AD2d 11 (2nd Dept. 1999).

This determination was made after an investigation by the plaintiff, outlined in the complaint, and a series of independent medical examinations conducted on February 28, 2019. The plaintiff submits an affidavit of Uriel McLeish, a Claims Specialist for the plaintiff, who sets forth the basis for denial of the claims upon the plaintiff's determination that the injuries alleged to have been sustained by Alvarado were either fabricated, or were not caused by the accident. Specifically, the affidavit avers that the police report from the accident, also provided by the plaintiff, shows that Alvarado was wearing a seatbelt during the alleged accident, there were no signs of any lacerations, he was released from the hospital the same day as the accident, and that he had been involved in two prior motor vehicle accidents.

The plaintiff further submits a report from Dr. Eric Roth, who opines that following an evaluation of Alvarado, there was no medical necessity for physical therapy, acupuncture, or any type of psychiatric treatment, and that Alvarado can work and perform activities of daily living without any limitation, a radiology report from Dr. Marc Katzman, in which he finds no recent post-traumatic injury to Alvarado's shoulder, and a radiology report from Dr. Darren Fitzpatrick, in which he finds no traumatic injuries to Alvarado's knee. Upon this proof, the plaintiff is entitled to a judgment declaring that the defaulting defendants are not entitled to no-fault benefits for the subject accident and claim.

As in this case, CPLR 3215(a) requires that when a default judgment is taken against fewer than all the defendants, the action is severed as against the remaining defendants. See Woodson v Mendon Leasing Corp., 259 AD2d 304 (1st Dept. 1999); see also Balanta v Stanline Taxi Corp., 307 AD2d 1017 (2nd Dept. 2003); Holt v Holt, 262 AD2d 530 (2nd Dept. 1999); Frolish v. Ryder Truck Rental, 63 AD2d 799 (3rd Dept. 1978). A judgment obtained by a plaintiff as against a defaulting defendant does not entitle the plaintiff to collateral estoppel against the non-defaulting defendants who would otherwise be denied a full and fair opportunity to litigate issues of liability. See Woodson v Mendon Leasing Corp., *supra*; Frolish v Ryder Truck Rental, *supra*.

Accordingly, it is

ORDERED that the plaintiff's motion for leave to enter a default judgment pursuant to CPLR 3215 as against the defendants, Alpha Imaging Consultants PLLC, Big Apple Pain Management PLLC, Brooklyn Medical Practice PC, Community Medical Imaging PC, Eclipse Medical Imaging PC, Friendly Rx Inc., Nassau Health Care Corp., North Shore Family Chiropractic PC, Physiologic Assessment Services LLC, Stand Up MRI of Brooklyn, Unicorn Acupuncture PC, Wellness Express PT PC and Yankee Neurophysiology PC, is granted in its entirety, without opposition; and it is further,

ADJUDGED and DECLARED that the defendants, Alpha Imaging Consultants PLLC, Big Apple Pain Management PLLC, Brooklyn Medical Practice PC, Community Medical Imaging PC, Eclipse Medical Imaging PC, Friendly Rx Inc., Nassau Health Care Corp., North Shore Family Chiropractic PC, Physiologic Assessment Services LLC, Stand Up MRI of Brooklyn, Unicorn Acupuncture PC, Wellness Express PT PC and Yankee Neurophysiology PC, are not

entitled to no-fault benefits pursuant to article 51 of the Insurance Law with regard to the motor vehicle accident that is alleged to have occurred on October 15, 2018, and the plaintiff is not obligated to honor or pay any claims for reimbursement submitted by the defendants under Claim Number 1042790-01, Policy Number B607625; and it is further,

ORDERED that, upon the parties Stipulation of Discontinuance, filed July 13, 2020, this action is hereby discontinued, with prejudice and without costs, as to defendant Orthopedics Spine & Sports Medicine LLC; and it is further

ORDERED that this action is severed and continued as against the remaining defendants, New York City Health and Hospital Corp. d/b/a Coney Island Hospital Center and New York City Health and Hospital Corp. d/b/a Coney Island Medical Practice; and it is further,

ORDERED that the plaintiff shall serve a copy of this order with notice of entry upon all defendants within 30 days of the date of this order; and it is further,

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.


NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

9/21/2020
DATE

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	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE