

American Tr. Ins. Co. v Intelligent Johnson
2021 NY Slip Op 30077(U)
January 12, 2021
Supreme Court, New York County
Docket Number: 152389/2020
Judge: Nancy M. Bannon
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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 -

INTELLIGENT JOHNSON, ACCU REFERENCE MEDICAL LAB, ALL CITY FAMILY HEALTHCARE, ALLMED MERCHANDISE & TRADING INC, ASTORIA ORGANIX PHARMACY, DYNAMIC SPINE PHYSICAL THERAPY, EXCELL CLINICAL LAB INC, FISS CHIROPRACTIC PC, HMP ORTHOPAEDICS, JULY GAYSYNSKY, LODESPOTO CHIROPRACTIC PC, MICHAEL TAMBURO, NEXRAY MEDICAL IMAGING, P.C., NEXTSTEP HEALING INC, NYC WELLNESS PHARMACY, PRC SUPPLIES INC, QUEENS COUNTY ACUPUNCTURE PC, SEDATION VACATION PERIOP MED PLLC, TIM CANTY, UNICAST INC

Defendants.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 39, 40, 41, 42, 43, 44, 45, 46, 47, 48

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, Intelligent Johnson, ACCU Reference Medical Lab, All City Family Healthcare, Allmed Merchandise & Trading Inc., Astoria Organix Pharmacy, Dynamic Spine Physical Therapy, Excell Clinical Lab Inc., Fiss Chiropractic PC, HMP Orthopaedics, July Gaysynsky Lodespoto Chiropractic PC, Michael Tamburo Nexray Medical Imaging PC, Next Step Healing Inc., NYC Wellness Pharmacy, PRC Supplies Inc., Queens Country Acupuncture PC, Sedation Vacation Periop Med PLLC, Tim Canty, Unicast Inc. 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 regarding a motor vehicle accident that is alleged to have occurred on June 28, 2019. The defendants submitted claims for reimbursement under Claim Number 1061877-02, under a policy issued by the plaintiff to

Intelligent Johnson, Policy Number CAP614485, 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).

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 Johnson. The plaintiff establishes 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, which include a series of peer reviews on the medical necessity of the treatment Johnson allegedly received. 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 Johnson were either fabricated, or were not caused by the accident. Specifically, the affidavit avers that based upon the police report from the accident, also provided by the plaintiff, the accident was a minor rear end collision that did not cause the airbags to be deployed or the windows to break, and indicated damages would be less than \$1000. The affidavit further avers that according to the police report, Johnson reported having struck his face and the back of his head against the passenger seat and his headrest and did not require emergency medical attention. McLeish's affidavit further avers that despite these alleged injuries, Johnson received excessive treatment on his right shoulder and left knee, claims that are almost identical to the claims relating to Johnson's brother who was also allegedly injured in the accident. McLeish also avers that the accident happened within the 67th precinct, an area known for staged accidents, and that although Johnson, in his application for no-fault benefits, denied involvement in any prior motor vehicle accident, an ISO claim search revealed that Johnson had a previous no-fault claim from July 25, 2014.

Defendant Johnson failed to appear for an independent medical examination in this matter. The plaintiff further submits peer review reports from Dr. Darren Fitzpatrick, Dr. Peter Chiu and David Timboli DC on the medical necessity of the treatment Johnson received. Dr. Fitzpatrick opines that after his review of Johnson's MRIs on his right shoulder and left knee there is no evidence of any traumatic injury. Dr. Chiu opines that after his peer review of Johnson's medical records there was no medical necessity for the ROM/MMT testing, MRI testing on the right shoulder and left knee, and knee orthosis performed on Johnson. Dr. Trimboli opines that after his peer review of Johnson's medical records there was no medical necessity for Johnson's MRI testing of the cervical and lumbar spine and nerve testing of upper and lower extremities. 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. Moreover, having failed to answer, the defendants are "deemed to have admitted all factual allegations in the complaint and all reasonable inferences that flow from them." Woodson v Mendon Leasing Corp., 100 NY2d 62, 70-71 (2003).

Accordingly, it is

ORDERED that the plaintiff's motion for leave to enter a default judgment pursuant to CPLR 3215 as against the defendants, Intelligent Johnson, ACCU Reference Medical Lab, All City Family Healthcare, Allmed Merchandise & Trading Inc., Astoria Organix Pharmacy, Dynamic Spine Physical Therapy, Excell Clinical Lab Inc., Fiss Chiropractic PC, HMP Orthopaedics, July Gaysynsky Lodespoto Chiropractic PC, Michael Tamburo Nexray Medical Imaging PC, Next Step Healing Inc., NYC Wellness Pharmacy, PRC Supplies Inc., Queens Country Acupuncture PC, Sedation Vacation Periop Med PLLC, Tim Canty, Unicast Inc., is granted in its entirety, without opposition; and it is further,

ADJUDGED and DECLARED that the defendants, Intelligent Johnson, ACCU Reference Medical Lab, All City Family Healthcare, Allmed Merchandise & Trading Inc., Astoria Organix Pharmacy, Dynamic Spine Physical Therapy, Excell Clinical Lab Inc., Fiss Chiropractic PC, HMP Orthopaedics, July Gaysynsky Lodespoto Chiropractic PC, Michael Tamburo Nexray Medical Imaging PC, Next Step Healing Inc., NYC Wellness Pharmacy, PRC Supplies Inc., Queens Country Acupuncture PC, Sedation Vacation Periop Med PLLC, Tim Canty, Unicast Inc., 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 June 28, 2019, and the plaintiff

is not obligated to honor or pay any claims for reimbursement submitted by the defendants under Claim Number 1061877-02, Policy Number CAP614485; 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.

1/12/2021

DATE


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

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