

American Tr. Ins. Co. v Newman
2021 NY Slip Op 32237(U)
November 10, 2021
Supreme Court, New York County
Docket Number: Index No. 156793/2020
Judge: Laurence L. Love
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LAURENCE LOVE PART 63M

Justice

-----X

AMERICAN TRANSIT INSURANCE COMPANY,

Plaintiff,

- v -

DEQUA NEWMAN, 5 BOROUGH ANESTHESIA, PLLC, ALL CITY FAMILY HEALTHCARE CENTER, INC., ASTORIA ORGANIX PHARMACY, INC., ATLAS PHARMACY LLC, AVERROES PHYSICAL THERAPY P.C., BODYWORKS CHIROPRACTIC P.C., CADS ANESTHESIA SERVICES, PLLC, CARESOFT LEASING CORP, CONRAD F CEAN MD PLLC, CROSSTOWN CHIROPRACTIC P.C. C/O BUSINESS FILINGS INCORPORATED, EXCELL CLINICAL LAB, INC., FLATBUSH ACUPUNCTURE P.C., HMP ORTHOPAEDICS, P.C., HORIZON ORTHO SUPPLY CORP., JA PHYSICAL THERAPY P.C., MC PHYSICAL THERAPY, P.C., MIDWOOD SURGICAL SUPPLIES, INC., NEXRAY MEDICAL IMAGING, P.C., PARS MEDICAL P.C., PRC SUPPLIES INC., SABAS NY SERVICES INC, SEDATION VACATION PERIOPERATIVE MEDICINE PLLC, SUMMER PT, P.C., UNICAST, INC, ZQZ ACUPUNCTURE, P.C.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27

were read on this motion to/for

JUDGMENT - DECLARATORY

Upon the foregoing documents, the motion is decided as follows:

Plaintiff American Transit Insurance Company (“ATIC”) commenced this action by filing of a summons and complaint on August 26, 2020. On September 28, 2020, the corporate defendants were served pursuant to BCL 306 and LLC Law 303 as appropriate. On November 23, 2020, Dequa Newman was served pursuant to CPLR 308(1). On April 19, 2021, plaintiff mailed additional copies of the summons and complaint to all defendants pursuant to CPLR 3215(g)(3) and (4). This action has been discontinued as against All City Family Healthcare Center, Inc., Cads

Anesthesia Services, PLLC, Excell Clinical Lab, Inc., Horizon Ortho Supply Corp, PRC Supplies, Inc., Summer PT, PC, and Unicast, Inc. Defendants Atlas Pharmacy, LLC, Caresoft Leasing Corp., Flatbush Acupuncture, PC, Nexray Medical Imaging, PC, Sabas NY Services, Inc. and ZQZ Acupuncture (the “Answering Defendants”) have appeared in this action. As such, defendants, 5 Borough Anesthesia, PLLC, Astoria Organix Pharmacy, Inc., Averroes Physical Therapy, PC, Bodyworks Chiropractic, PC, Conrad F. Cean MD, PLLC, Crosstown Chiropractic, PC, HMP Orthopaedics, PC, JA Physical Therapy, PC, MC Physical Therapy, PC, Midwood Surgical Supplies, Inc., Pars Medical, PC, and Sedation Vacation Perioperative Medicine, PLLC (the “Non-Answering Defendants”) are now in default.

Plaintiff now seeks a default judgment against the non-answering defendants and summary judgment against the Answering Defendants, granting plaintiff a declaratory judgment that Dequa Newman is not an eligible injured person entitled to no-fault benefits under ATIC insurance policy FPT009151, Claim No.: 1060022-02, granting ATIC a declaratory judgment that ATIC is not obligated to honor or pay claims for reimbursement submitted by the medical providers named herein, as assignees of Dequa Newman, under ATIC insurance policy FPT009151, Claim No.: 1060022-02, nor is ATIC required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under ATIC insurance policy FPT009151, Claim No.: 1060022-02 from the alleged accident of June 7, 2019, involving Newman as same is not an eligible injured person as defined by the Policy and/or New York State Regulation 68; a declaratory judgment that ATIC is not required to provide, pay, or honor any current or future claim for no-fault benefits under the Mandatory Personal Injury Protection endorsement under ATIC insurance policy FPT009151, Claim No.: 1060022-02, nor is ATIC required to provide, pay,

honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under ATIC insurance policy FPT009151, Claim No.: 1060022-02 from the alleged accident of June 7, 2019, involving Newman as Newman is not an eligible injured person as defined by the Policy and/or New York State Regulation 68.


In support of its motion, plaintiff submits the affidavits of Cheryl Glaze, a No-Fault Claims supervisor employed by plaintiff, Luis Campbell, the mail room supervisor employed by plaintiff, and Lynn Hershman, an employee of Independent Physical Exam Referrals, Inc., who schedules IME appointments on behalf of plaintiff, the affidavit of Dr. Marc Silverman, the doctor assigned to conduct said IMEs, together with the relevant insurance policy and supporting documents, which establish as follows: On June 7, 2019, a vehicle insured by plaintiff and owned by non-party Li Chingming was involved in a motor vehicle accident. Dequa Newman made a claim to ATIC, as a purported eligible injured person of the above-referenced insurance policy, to the plaintiff under claim #1060022-02. Arising from the accident, Newman made no-fault insurance claims with ATIC and assigned her benefits to various medical providers, who submitted claims to ATIC seeking reimbursement. Plaintiff mailed letters to Newman scheduling an IME on November 22, 2019 with Dr. Marc Silverman. Newman failed to appear at said IME. Plaintiff mailed letters to Newman scheduling an IME on December 27, 2019 with Dr. Silverman. Newman failed to attend said IME. Based upon Newman's failure to attend the scheduled IMEs, she has breached a condition precedent to insurance coverage and based upon same, plaintiff mailed general denials to the no-fault claimants on January 7, 2020. As such, plaintiff has established an entitlement to a default judgment against the Defaulting Defendants and Summary Judgment against the answering defendants. The instant motion was unopposed. Accordingly, it is hereby:

ORDERED that Dequa Newman is not an eligible injured person entitled to no-fault benefits under ATIC insurance policy FPT009151, Claim No.: 1060022-02; and it is further

ORDERED that ATIC is not obligated to honor or pay claims for reimbursement submitted by Atlas Pharmacy, LLC, Caresoft Leasing Corp., Flatbush Acupuncture, PC, Nexray Medical Imaging, PC, Sabas NY Services, Inc., ZQZ Acupuncture 5 Borough Anesthesia, PLLC, Astoria Organix Pharmacy, Inc., Averroes Physical Therapy, PC, Bodyworks Chiropractic, PC, Conrad F. Cean MD, PLLC, Crosstown Chiropractic, PC, HMP Orthopaedics, PC, JA Physical Therapy, PC, MC Physical Therapy, PC, Midwood Surgical Supplies, Inc., Pars Medical, PC, and Sedation Vacation Perioperative Medicine, PLLC, as assignees of Dequa Newman, under ATIC insurance policy FPT009151, Claim No.: 1060022-02, nor is ATIC required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits received from Atlas Pharmacy, LLC, Caresoft Leasing Corp., Flatbush Acupuncture, PC, Nexray Medical Imaging, PC, Sabas NY Services, Inc., ZQZ Acupuncture 5 Borough Anesthesia, PLLC, Astoria Organix Pharmacy, Inc., Averroes Physical Therapy, PC, Bodyworks Chiropractic, PC, Conrad F. Cean MD, PLLC, Crosstown Chiropractic, PC, HMP Orthopaedics, PC, JA Physical Therapy, PC, MC Physical Therapy, PC, Midwood Surgical Supplies, Inc., Pars Medical, PC, and Sedation Vacation Perioperative Medicine, PLLC from the alleged accident of June 7, 2019, involving Newman as same is not an eligible injured person as defined by the Policy and/or New York State Regulation 68; and it is further

ORDERED that ATIC is not required to provide, pay, or honor any current or future claim for no-fault benefits submitted by the defaulting medical providers under the Mandatory Personal Injury Protection endorsement under ATIC insurance policy FPT009151, Claim No.: 1060022-02,

nor is ATIC required to provide, pay, honor or reimburse any claims set forth herein, in any current or future proceeding, including, without limitation, arbitrations and/or lawsuits seeking to recover no-fault benefits arising under ATIC insurance policy FPT009151, Claim No.: 1060022-02 from the alleged accident of June 7, 2019, involving Newman as Newman is not an eligible injured person as defined by the Policy and/or New York State Regulation 68.

<u>11/10/2021</u> DATE					 LAURENCE LOVE, J.S.C.		
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE