

Hereford Ins. Co. v 5 Borough Anesthesia, PLLC

2021 NY Slip Op 32782(U)

December 22, 2021

Supreme Court, New York County

Docket Number: Index No. 651518/2020

Judge: Laurence L. Love

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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. LAURENCE LOVE PART 63M

Justice

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HEREFORD INSURANCE COMPANY,

Plaintiff,

- v -

5 BOROUGH ANESTHESIA, PLLC, ADAPTATION
MEDICAL P.C., ALP SUPPLY INC, AMILOR
ACUPUNCTURE P.C., ANCIENT & MODERN
ACUPUNCTURE P.C. A/K/A ANCIENT AND MODERN
ACUPUNCTURE PC,BLISS DRUGS INC.,CARESOF
LEASING CORP, CENTRAL DRUGS INC.,CUSTOM RX
PHARMACY LLC,DEMETRIOS KARAKIZIS D.C.,
P.C.,ECLIPSE MEDICAL IMAGING P.C.,GRAIG
GRANOVSKY CHIROPRACTIC P.C.,HMP
ORTHOPAEDICS, P.C.,INTEGRATED SPECIALTY ASC
LLC,LONGEVITY MEDICAL SUPPLY, INC.,MAXIM
ORTHOPAEDICS PLLC,NEW ENGLAND CHIROPRACTIC,
P.C.,NEW MILLENNIUM MEDICAL IMAGING, P.C.,NYC
CARE PT, P.C.,PREMIER ANESTHESIA ASSOCIATES
PC,QR MEDICAL SERVICES, P.C.,SP ONE SERVICES,
INC.,STERNBERG CHIROPRACTIC, P.C.,WALLEGOOD
INC.,WJ WELLNESS ACUPUNCTURE, P.C.,WS
PSYCHOLOGICAL, P.C.,CLARENCE BROWN, RICHARD
FLOWERS

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

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

Upon the foregoing documents, plaintiff's motion seeking to enter a default judgment against the non-answering defendants is decided as follows:

Plaintiff commenced the instant action by filing a summons and complaint on March 6, 2020. As described in the complaint, on September 23, 2019, defendants Clarence Brown and Richard Flowers were passengers in a Hereford-insured livery vehicle, driven by Maria Pichardo, which was involved in an accident. Said claimants allegedly sustained injuries and sought

**DECISION + ORDER ON
MOTION**

treatment from the defendant medical providers. Plaintiff seeks a declaratory judgment that it is not obligated to pay no-fault claims arising out of said accident based upon Clarence Brown's failure to appear at an Examination Under Oath and Richard Flowers' testimony at his Examination Under Oath, leading to a founded belief that Brown and Flowers' alleged injuries did not arise from the subject accident or that same made material misrepresentations concerning the accident to plaintiff. On March 10, 2020, Richard Flowers was served pursuant to CPLR 308(2). The corporate defendant movants were served pursuant to BCL Section 306 or LLC Law Section 303 except for Integrated Specialty, ASC, LLC and Premier Anesthesia Associates, PC who were served through their managing agents. On August 31, 2021, the defaulting defendants were served with an additional copy of the summons and complaint pursuant to CPLR 3215(g). Plaintiff now moves for a default judgment. After filing, plaintiff's motion was withdrawn as to defendants, Graig Granovsky Chiropractic, Pc., Longevity Medical Supply, Inc. and answers have been filed by Custom RX Pharmacy, LLC, Adaptation Medical, PC, Sternberg Chiropractic, PC, and Caresoft Leasing Corp. Plaintiff moves to enter a default judgment against 5 Borough Anesthesia, PLLC, ALP Supply, Inc., Amilor Acupuncture, PC, Ancient & Modern Acupuncture, PC, Bliss Drugs, Inc., Central Drugs, Inc., Demetrios Karakizis, DC, PC, Eclipse Medical Imaging, PC, HMP Orthopaedics, PC, Integrated Specialty ASC, LLC, Maxim Orthopaedics, PLLC, New England Chiropractic, PC, New Millennium Medical Imaging, PC, NYC Care PT, PC, Premier Anesthesia Associates, PC, QR Medical Services, PC, SP One Services, Inc., Sternberg Chiropractic, PC, Wallegood, Inc. WJ Wellness Acupuncture, PC, WS Psychological, PC and Richard Flowers (the "Defaulting Defendants").

In support of plaintiff's motion, plaintiff submits the affidavit of Joronda McBurnie, a Senior No-Fault adjuster employed by plaintiff, the police report, and the transcript of Richard

Flowers' EUO, which establish as follows: On September 23, 2019, Flowers and Brown were passengers in a Hereford-insured livery vehicle being driven by Maria Pichardo ("Pichardo") when it was allegedly involved in a motor vehicle collision at the intersection of North Conduit Avenue and Cross Bay Boulevard in Queens, New York. Claimants later alleged to have sustained significant bodily injuries as a result of the collision, and Hereford assigned claim number 86844 to all No-Fault claims relating to the September 23, 2019 collision. The circumstances surrounding the collision raised a strong possibility that the Claimants' alleged injuries and any subsequent treatment by the Medical Provider Defendants were not causally related to the accident. Brown failed to appear for an EUO and Flowers gave suspect answers at his EUO. Based upon same, Hereford maintains a founded belief that the Claimants' alleged injuries and any subsequent No-Fault treatment submitted by the Medical Provider Defendants were not causally related to the September 23, 2019 collision and/or did not arise from an insured event.

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 Group of Ins. Co.*, 90 N.Y.2d 195, 199 (1997). In meeting its burden, an 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. Services, P.C. v. Allstate Ins. Co.*, 25 Misc. 3d 39, 39 (N.Y. App. Term, 2d Dep't 2009). Rather, the insurer must put forth facts that suggest it maintains a founded belief that the injuries or treatments are unrelated to the collision. Plaintiff has done so here.

ORDERED that Richard Flowers is not an eligible injured person entitled to no-fault benefits under Hereford insurance policy CA241951, Claim No.: 86844; and it is further

ORDERED that Hereford Insurance Company is not obligated to honor or pay claims for reimbursement submitted by the defaulting medical providers (5 Borough Anesthesia, PLLC, ALP Supply, Inc., Amilor Acupuncture, PC, Ancient & Modern Acupuncture, PC, Bliss Drugs, Inc., Central Drugs, Inc., Demetrios Karakizis, DC, PC, Eclipse Medical Imaging, PC, HMP Orthopaedics, PC, Integrated Specialty ASC, LLC, Maxim Orthopaedics, PLLC, New England Chiropractic, PC, New Millennium Medical Imaging, PC, NYC Care PT, PC, Premier Anesthesia Associates, PC, QR Medical Services, PC, SP One Services, Inc., Sternberg Chiropractic, PC, Wallegood, Inc. WJ Wellness Acupuncture, PC, WS Psychological, PC), as assignees of Richard Flowers, under Hereford insurance policy CA241951, Claim No.: 86844, nor is Hereford Insurance Company 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 filed by 5 Borough Anesthesia, PLLC, ALP Supply, Inc., Amilor Acupuncture, PC, Ancient & Modern Acupuncture, PC, Bliss Drugs, Inc., Central Drugs, Inc., Demetrios Karakizis, DC, PC, Eclipse Medical Imaging, PC, HMP Orthopaedics, PC, Integrated Specialty ASC, LLC, Maxim Orthopaedics, PLLC, New England Chiropractic, PC, New Millennium Medical Imaging, PC, NYC Care PT, PC, Premier Anesthesia Associates, PC, QR Medical Services, PC, SP One Services, Inc., Sternberg Chiropractic, PC, Wallegood, Inc. WJ Wellness Acupuncture, PC, WS Psychological, PC from the alleged accident of September 23, 2019, involving Flowers 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 Hereford insurance policy CA241951, Claim No.: 86844, nor

is Hereford 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 Hereford insurance policy CA241951, Claim No.: 86844 from the alleged accident of September 23, 2019, involving Flowers as Flowers is not an eligible injured person as defined by the Policy and/or New York State Regulation 68.

12/22/2021
DATE


LAURENCE LOVE, J.S.C.

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