

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS A. ADAMS,

Acting Supreme Court Justice

TRIAL/IAS, PART 33
NASSAU COUNTY

INTERBORO INSURANCE COMPANY,

Plaintiff(s),

MOTION DATE: 9/23/11

INDEX NO.: 7094/11

-against-

SEQ. NOS. 1 & 2

LOUIS BERTHOLET, BSZ CHIROPRACTIC, P.C.,
MIDWOOD TOTAL REHABILITATION MEDICAL, P.C.,
SALEM, P.T., P.C., V&T MEDICAL, P.C., ACTIVE
CARE MEDICAL SUPPLY CORP., AP DIAGNOSTIC MEDICAL,
P.C., JAMAICA AVENUE ACUPUNCTURE, P.C., ADVANCED
MEDICAL CARE, P.C., MG ACUPUNCTURE, P.C., VILLAGE
CHIROPRACTIC, P.C., QUEENS INTEGRATED MEDICAL
CARE, P.C.,

Defendant(s)

The plaintiff's motion, pursuant to CPLR §3215, for a default judgment as against the corporate defendants due to their assignor, the defendant Louis Bertholet's, failure to appear for September 30, 2010, October 20, 2010 and November 16, 2010 examinations under oath (see plaintiff's Exhibit 13), following an alleged August 7, 2010 motor vehicle accident is granted. The appearance at an "EUO" is a condition precedent to coverage (see GLM Medical, P.C. v State Farm Mutual Automobile Ins. Co., 30 Misc3d 137A).

The defendant Active Care Medical Supply Corp.'s cross motion, pursuant to CPLR §3012(d), to compel the plaintiff to accept its late June 24, 2011 proposed answer (see defendant Active Care's Exhibit 1) is denied. "To compel the acceptance of an untimely pleading, a party must provide a reasonable excuse for the delay and demonstrate a potentially meritorious defense to the action" (Roccanova v Aussino (USA), Inc., 76 AD3d 522,522-523). Here, notwithstanding the cross movant's brief delay in appearing, as the result of the failure to satisfy a condition precedent to coverage, it has failed to demonstrate the existence of a potentially meritorious defense.

The action has been discontinued as against the defendant Louis Bertholet.

Settle Judgment On Notice.

Dated: OCT 19 2011



A.J.S.C.
X X X

ENTERED
OCT 28 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE