

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: PART 17

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PROGRESSIVE PREFERRED INSURANCE CO. and
PROGRESSIVE DIRECT INSURANCE CO.,

Plaintiffs,

- against -

KEITH ANTHONY, ERIC LEON, JOHN SMITH,
NORMA DONATO, JEAN ICART, JAMEL HAILE,
EVAN DEBROSSE A/K/A YVENS DEBROSSE,
KAREN SCIVOLI, DELANO MEEK, LEO MONTASS,
JOHN ANDERSON, YEKATERINA BORODINA,
SVETLANA ZHURAVKOVA, OJI NEVERSON,
KRYSTAL J. FORDE, JEAN TOUSSAINT,
KATTIA RENE-MARIE, CARLO TOUSSAINT,
KRYSTAL M. WILKERSON, KRYSTAL WASHINGTON,
CHRISTOPHER HAMILTON, BRYAN THOMPSON,
A.K.A. BRIAN THOMPSON A.K.A. BRYANT THOMPSON,
KEISHA THOMPSON, JULIE THOMPSON, JAIRO GUIDO,
JOSEPH MALONE, ITLANDE PAMPHILE,
RONALD DUPRERA, LOUIS SCHNYDER,
MICHEL JEAN, DAVID FEY, GOLREEM PIERRE REMY,
SADOUL PRUDENT, PETRONILA TORRES,
LIONEL MARIUS, ROBINSON HONORE, A/K/A
HONORE ROBINSON, MARC PIERRE-LOUIS,
FRANTZ NAPOLEON, NATIARIGHA MEJIA,
ASJEAA QUICK, ADLEY LAFOREST, JERRY MEYERS,
VLADYMRIR JEAN (drivers/occupants/owners of other vehicle)
MIRTHAL JOURDAIN, CLAUDE ADAM, MICHAEL MILFORT
GETRO A/K/A MILFORT GETRO CLAUDIA RICHMOND,
CHASMA JACSEN A/K/A JACSEN CHASMA,
MEL CHUI LEUNG, ROTHSCHILD PIERRE-LOUIS A/K/A
LOUIS R. PIERRE A/K/A/ PIERRE LOUIS ROTHCHILD
A/K/A. PIERRE-LOUIS ROTHSCHILD, VLADINE MATHIEU,
LIONEL CHARLES, TINA MCCOY, JHORRY PICSOE,
SHELDON A POMPEY, JEAN LUCKNER CELINE,
MAGILIE EXIL A/K/A MAGALIE EXIL, BENFAKHA HABIB,
MOHAMED A. MOSTEFASIDEBAKLY, JAHSIYA POMPEY,
JADEN POMPEY, KAREEMA MITCHELL (drivers/occupants/owners
of other vehicle), FRANCISCO TANG A/K/A FRANCOIS TANG,
HYACINTHE ELIE MAUDE A/K/A HYACINTHE ELIE-MAUDE,
ELAINE JACQUES, CARLOS GRENALD, FERNANDO STERLING,

DECISION AND ORDER

Index No. 18368/2008

Motion Seq. No. 002

Orig Return Date: 7/12/10

CLINFFORD BERSON, JEFF BERSON, MARIE JOSEPH A/K/A MARIE EVELYNE JOSEPH, CARLYLE ROSS, CARLOS SUAREZ, MARIA CASTRO, SEAN MARQUEZ, MELANDE C. JOSEPH A/K/A MELANDE JOSETH, ROBERSON DELMAS, DENIS PIERRE-LOUIS, ANGELA BUNDY, BENOIT EDOUARD, MAUREEN CROOKS, LOVELY JACQUES, CLAUDIA A . GERARDE, CARLOS PEREZ, NADIL SANCHEZ, MOHAMED GAYA, PETER JEAN and RAPHAEL JEAN (“Individual Defendants”),

-and-

HIGH QUALITY MEDICAL P.C., MOBILE MEDICAL & DIAGNOSTIC PLLC, INFINITY HEALTH PRODUCTS LTD., AVE P REHAB & MEDICAL PLAZA, P.C., BAY RIDGE ACUPUNCTURE P.C., REHAB MEDICAL, P.C., HIGHLAND PARK CHIROPRACTIC, P.C., A PLUS MEDICAL P.C., MEDICAL OFFICE, BENIGNO R. SALES M.D., P.C., HIGH DEFINITION MRI, P.C., EAST WEST ACUPUNCTURE NY, P.C., EVOLUTION CHIROPRACTIC P.C., VEGA CHIROPRACTIC, P.C., W.H.O. ACUPUNCTURE, P.C., SHARP RADIOLOGY P.C., AVENUE I MEDICAL P.C., EAGLE SURGICAL SUPPLY INC., ASJS MEDICAL PLLC, BAK CHIROPRACTIC, P.C., FINE HEALING ACUPUNCTURE, P.C., ADVANCED REHAB CARE PT, P.C., MUTUAL CARE MEDICAL SUPPLY, INC., PARK SLOPE MEDICAL AND SURGICAL SUPPLY, INC., QUICK DOCS, EAST-WEST TOP MEDICAL P.C., A&B MEDICAL DIAGNOSTIC OF NY P.C., LEICA SUPPLY, INC., ORIENT HEALTH CARE ACUPUNCTURE, P.C., VALLEY PYSCHOLOGICAL, P.C., CB CHIROPRACTIC LIMITED LIABILITY COMPANY, DOCTOR RICHARD MEDICAL P.C., METROSTAR INC., MERIDIAN MEDICAL OF NY, P.C., MERIDIAN MEDICAL, P.C., NATURE ACUPUNCTURE, P.C., CITY CHIROPRACTIC, P.C., HK PSYCHOLOGICAL, P.C., ATLANTIC RADIOLOGY IMAGING, P.C., TRIMED MEDICAL SUPPLY INC., A.B. MEDICAL, P.C., QUALITY DIAGNOSTIC IMAGING P.C., BEAL-MEDEA PRODUCTS, INC., MATRIX DIAGNOSTIC & GENERAL MEDICINE, P.C., ATLANTIC SPORTS MEDICINE, P.C., PUSHPA R. BHANSALI, PHYSICIAN, P.C., VICTORY MEMORIAL HOSPITAL, ANESTHESIA ASSOCIATES OF BAY RIDGE, LLP, BAY RIDGE ASSISTING SURGEON P.C., PSYCHOLOGICAL CARE, P.C., VERRAZANO ACUPUNCTURE P.C., PRIMA MEDICAL SUPPLY, INC., QUALITY PSYCHOLOGICAL SERVICES P.C., RADIOLOGY TODAY, P.C., NEW HP CHIROPRACTIC P.C., PRIMA MEDICAL, P.C., ORTHO-MED SURGICAL SUPPLY, INC., OMEGA MEDICAL DIAGNOSTIC, P.C., GLM MEDICAL P.C., AA ACUPUNCTURE SERVICE, P.C., ALIGN FOR HEALTH CHIROPRACTIC, P.C., QUALITY HEALTH PRODUCTS, INC., ALEV MEDICAL SUPPLY INC., PMR MEDICAL AND DIAGNOSTIC P.C., HURGADA PHYSICAL THERAPIST, P.C., CANON CHIROPRACTIC CARE, P.C., CANON CHIROPRACTIC, P.C., DELTA DIAGNOSTIC RADIOLOGY P.C., NATURAL THERAPY ACUPUNCTURE, P.C., ARGUELLES M.D., P.C., DOVER ACUPUNCTURE P.C., FLATBUSH CHIROPRACTIC P.C., Y&W ACUPUNCTURE PLLC, BENIGNO R. SALES, JR., M.D., CHOONG KWON KIM, M.D., ELWALIELY ASHRAF, DPT, PUSHP R. BHANSALI, MD, PRITPAL KANG, M.D., SONYA ILIZIROV, PH.D. SAKO

TARAKHCHYAN, D.C., SANFORD YU, L.AC., EDWIN ARTHUR EMERSON, D.C., GRACIA LUIS MAYARD, M.D., AHMED L. HAMMAM A/K/A AHMED L. HAMMAN, ISHRAT KHAN, M.D., DR. HO YIM, P.D.M., STEVEN TILL, D.C., LEONID SIMAKOVSKY, D.C., AP ORTHOPEDIC & REHABILITATION P.C., ORTHO & NEURO CARE P.C., DOCTOR RICHARD MEDICAL P.C., NATURE ACUPUNCTURE P.C., GOLDEN NEEDLE ACUPUNCTURE P.C., COMPREHENSIVE ANESTHESIA ASSOCIATES, EXCEL ASSIST MEDICAL P.C., KAMARA SUPPLIES, BOULEVARD SURGICAL CENTER, YIM JOON, I.V. MEDICAL SUPPLY INC., (“Provider Defendants”),

Collectively, the Defendants

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P R E S E N T :

HON. JOEL K. ASARCH,
Justice of the Supreme Court.

The following named papers numbered 1 to 4 were submitted on this Notice of Motion on December 13, 2010, and a further Stipulation of [partial] Discontinuance was submitted on June 23, 2011:

Papers numbered

| | |
|---|-----|
| Notice of Motion, Affirmation and Affidavit | 1-3 |
| Stipulation of [partial] Discontinuance | 4 |
| Affidavit in Opposition | X |

This motion by the plaintiffs Progressive Preferred Insurance Co. and Progressive Direct Insurance Co. (“Progressive”) for:

(A) **an order pursuant to CPLR 3215 granting it a default judgment, together with costs and interest, including reasonable attorneys’ fees,** against defendants Keith Anthony, Norma Donato, Karen Scivoli, Delano Meek, Leo Montass, Oji Neverson, Krystal J. Forde, Kattia Renee-Marie, Joseph Malone, Louis Schnyder, Petronila Torres, Chasma Jacsen a/k/a Jacsen Chasma, Rothschild Pierre-Louis a/k/a Louis R. Pierre a/k/a Pierre Louis Rothchild a/k/a Pierre-Louis Rothschild, Vladine Mathieu, Lionel Charles, Jean Luckner Celine, Benfakha Habib, Mohamed A. Mostefasidebakly, Jaden Pompey, Kareema Mitchell, Elaine Jacques, Fernando

Sterling, Denis Pierre-Louis, Benoit Edouard, Maureen Crooks, Peter Jean, Benigno R. Sales, Jr., M.D., Yim Joon, Dr. Ho Yim, P.D.M. and Thomas Cox, (“Individual Defendants”), and High Quality Medical P.C., Mobile Medical & Diagnostic PLLC, Infinity Health Products Ltd., Ave P Rehab & Medical Plaza, P.C., Bay Ridge Acupuncture P.C., Highland Park Chiropractic, P.C., A Plus Medical, P.C., B.R. Sales, M.D., P.C., East West Acupuncture NY, P.C., Evolution Chiropractic P.C., Sharp Radiology P.C., Advanced Rehab Care PT PC, Mutual Care Medical Supply, Inc., Park Slope Medical and Surgical Supply, Inc., East-West Top Medical P.C., Leica Supply, Inc., Orient Health Care Acupuncture, P.C., Valley Psychological, P.C., CB Chiropractic Limited Liability Company, Doctor Richard Medical P.C., Meridian Medical of NY, P.C., Meridian Medical, P.C., Nature Acupuncture, P.C., City Chiropractic, P.C., HK Psychological, P.C., Atlantic Radiology Imaging, Trimed Medical Supply, Inc., Quality Diagnostic Imaging, P.C., Beal-Medea Products, Inc., Matrix Diagnostic & General Medicine, P.C., Atlantic Sports Medicine, P.C., Anesthesia Associates of Bay Ridge, LLP, Bay Ridge Assisting Surgeon, P.C., Psychological Care, P.C., Verranzano Acupuncture P.C., Prima Medical Supply, Inc., Quality Psychological Services P.C., Radiology Today, P.C., New HP Chiropractic P.C., Ortho-Med Surgical Supply, Inc., Omega Medical Diagnostic, P.C., GLM Medical P.C., AA Acupuncture Service, P.C., Align for Health Chiropractic, P.C., Quality Health Products, Inc., PMR Medical and Diagnostic, P.C., Hurgada Physical Therapist, P.C., Canon Chiropractic Care, P.C., Delta Diagnostic Radiology P.C., Natural Therapy Acupuncture, P.C., Arguelles, M.D., P.C., Dover Acupuncture P.C., Flatbush Chiropractic P.C., Y&W Acupuncture PLLC, AP Orthopedic & Rehabilitation P.C., Ortho & Neuro Care P.C., Golden Needle Acupuncture P.C., Comprehensive Anesthesia Associates, PLLC, Exel Assist Medical P.C., I.V. Medical Supply Inc. and Li-Elle Service; and

(B) an order pursuant to CPLR 306-b, 308(5) granting it an extension of time to effect service on and use of substituted service on Eric Leon, John Smith, Jean Icart, Jamel Haile, Evan Debrosse a/k/a Yvens Debrosse, John Anderson, Jean Toussaint, Carlo Toussaint, Krystal M. Wilkerson, Krystal Washington, Christopher Hamilton, Bryan Thompson, a/k/a Brian Thompson a/k/a Bryant Thompson, Keisha Thompson, Julie Thompson, Itlande Pamphile, Ronald Duprera, Michel Jean, David Fey, Golreem Pierre Remy, Sadoul Prudent, Lionel Marius, Robinson Honore a/k/a Honore Robinson, Marc Pierre-Louis, Natiarigha Mejia, Asjeaa Quick, Adley LaForest, Jerry Myers, Vladymir Jean, Mirthal Jourdain, Claude Adam, Claudia Richmond, Mel Chui Leung, Tina McCoy, Jhorry Picsoe, Sheldon A. Pompey, Magilie Exil a/k/a Magalie Exil, Jahsiya Pompey, Francisco Tang a/k/a Francois Tang, Hyacinthe Elie Maude a/k/a Hyacinthe Elie-Maude, Carlos Grenald, Clinfford Berson, Jeff Berson, Marie Joseph a/k/a Marie Evelyne Joseph, Carlyle Ross, Carlos Suarez, Maria Castro, Sean Marquez, Melande C. Joseph a/k/a Melande Joseth, Roberson Delmas, Lovely Jacques, Claudia A. Gerarde, Carlos Perez, Nadil Sanchez, Mohamed Gaya, Raphael Jean, Michael Milfort Getro a/k/a Milfort Getro, Keith Crockell and Ashaina Cumberbatch (“Individual Defendants”); Rehab Medical, P.C; and Kamara Supplies, is **granted as provided herein.**

In this action, Progressive seeks to annul insurance policies issued to: (1) defendant Keith Anthony on August 27, 2007 with respect to losses claimed by him, Norma Donato, Eric Leon and John Smith as the result of a motor vehicle accident on August 30, 2007; (2) the defendant Christopher Hamilton on September 25, 2007 with respect to losses claimed by him, Joseph Malone, Bryan Thompson a/k/a Brian Thompson a/k/a Bryant Thompson, Keisha Thomson and Julie Thomson as the result of a motor vehicle accident on November 24, 2007; (3) the defendant Claude

Adam on December 19, 2007, with respect to losses claimed by him, Claudia Richmond, Mel Chui Leung, Michael Milfort Getro a/k/a/ Milfort Betro and Chasma Jacsen a/k/a Jacsen Chasma as the result of a motor vehicle accident on January 18, 2008; (4) the defendant Asjeaa Quick on October 18, 2007, with respect to losses claimed by him, Jean Vladymir, Mirthal Jourdain, Adley Laforest and Jerry Myers as the result of a motor vehicle accident on October 28, 2007; (5) the defendant Lionel Marius on December 27, 2007 with respect to losses claimed by him, Frantz Napoleon, Natiarigha Mejia, Robinson Honore a/k/a Honore Robinson and March Pierre-Louis as the result of a motor vehicle accident on December 31, 2007; (6) the defendant Rothschild Pierre-Louis a/k/a Louis R. Pierre a/k/a Pierre Louis Rothchild a/k/a Pierre-Louis Rothschild on January 4, 2008 with respect to losses claimed by him, Tina McCoy, Vladine Mathieu, Lionel Charles and Jhorry Picsoe as the result of a motor vehicle accident on January 20, 2008; (7) Itlande Pamphile on October 22, 2007 with respect to losses claimed by him, Louis Schnyder, David Fey, Ronald Duprera and Michel Jen as the result of a motor vehicle accident on November 6, 2007; (8) Ronald Duprera on October 24, 2007 with respect to losses claimed by him, Petronila Torres, Golreem Pierre Remy and Sadonl Prudent as the result of a motor vehicle accident on October 27, 2007; (9) Jamel Haile on October 16, 2007 with respect to losses claimed by him, Karen Scivoli, Jean Icart and Evan Debrosse a/k/a Yvens Debrosse as the result of a motor vehicle accident on October 25, 2007; (10) Jean Toussaint on August 10, 2007 with respect to losses claimed by him, Krystal M. Wilkerson, Krystal Washington, Kattia Rene-Marie and Carlo Toussaint as the result of a motor vehicle accident on August 11, 2007; (11) Delano Meek on August 26, 2007 with respect to losses claimed by him, Yekaterina Borodina, Svetlana Khuravkova, Leo Montass and John Andersen as the result of a motor vehicle accident on August 28, 2007; as well as (12) losses claimed by him, Krystal J. Forde

and Oji Neverson as the result of a motor vehicle accident on September 18, 2007; (13) Sheldon Pompey on October 17, 2007 with respect to losses claimed by him, Benfakha Habib, Mohamed A. Mostefasidebakly, Jean Luckner Celine and Magile Exil as the result of a motor vehicle accident on October 25, 2007; as well as (14) losses claimed by him, Jahsiya Pompey, Jaden Pompey and Kareema Mitchell as the result of a motor vehicle accident on November 16, 2007; (15) Francisco Tang a/k/a Francois Tang on November 7, 2007 for losses claimed by him, Carlos Grenald, Fernando Sterling, Hyacinthe Elie Maude a/k/a Hyacinthe Elie-Mande and Elaine Jacques as the result of a motor vehicle accident on November 16, 2007; (16) Clinfford Berson on August 14, 2007 for losses claimed by him, Carlyle Ross, Carlos Suarez, Maria Castro, Sean Marquez, Jeff Berson and Marie Joseph a/k/a Marie Evelyne Joseph as a result of a motor vehicle accident on August 19, 2007; (17) Melande C. Joseph a/k/a Melande Joseth on December 20, 2006, for losses claimed by her, Roberson Delmas, Denis Pierre-Louis, Angela Bundy and Eleinda O'Reilly as the result of a motor vehicle accident on December 25, 2006; as well as for losses claimed by her, Benoit Edouard, Maureen Crooks, Lovely Jacques and Claudia A. Gerarde as a result of a motor vehicle accident on January 20, 2007 ; and, by her, Carlos Perez, Nadil Sanchez, Mohamed Gaya, Peter Jean and Raphael Jean for losses claimed as a result of a motor vehicle accident on January 28, 2007.

In view of the ultimate relief sought by Progressive, i.e., the annulment of its policies' application to these numerous motor vehicle accidents, the healthcare providers who allegedly provided services to the people allegedly injured in the accidents have been named defendants in this action as well.

“On a motion for leave to enter judgment against a defendant for the failure to answer or appear, a plaintiff must submit proof of service of the summons and complaint, proof of the facts

constituting its claim, and proof of the defendant's default." Triangle Properties #2, LLC v Narang, 73 AD3d 1030, 1032 (2nd Dept. 2010), citing Mercury Cas. Co. v Surgical Center at Milburn, LLC, 65 AD3d 1102 (2nd Dept. 2009); Matone v Sycamore Realty Corp., 50 AD3d 978 (2nd Dept. 2008), lv den., 11 NY3d 715 (2009).

In support of its motion for a default judgment, Progressive has established via Affidavits of Service that it properly served the Summons and Complaint on the individual defendants against whom it seeks a default judgment pursuant to CPLR 308 as well as the domestic and/or authorized foreign corporations against whom it seeks a default judgment pursuant to CPLR 311 or Business Corporation Law § 306 and CPLR 3215(f), 3215(g)(4)(i), 3215(g)(4)(ii) and that none of those parties have appeared or otherwise sought relief in connection with this action. It has also established the merits of its claims. More specifically, it has established that the underlying accidents were intentionally caused as a result of which coverage under the policy does not exist; that the defendants materially misrepresented the facts and circumstances of the underlying accidents to induce it to provide coverage and pay benefits; and, that the defendants made false statements with the purpose of deceiving and defrauding Progressive and to induce it to provide coverage and to afford no-fault and uninsured motorist benefits with respect to claims arising from the accidents as a result of which coverage may be denied under the policies. It has also established the failure of the defaulting defendants to cooperate with it in further evaluating coverage.

Accordingly, Progressive's motion for a **default judgment** against defendants Keith Anthony, Norma Donato, Karen Scivoli, Delano Meek, Leo Montass, Oji Neverson, Krystal J. Forde, Kattia Renee-Marie, Joseph Malone, Louis Schnyder, Petronila Torres, Chasma Jacsen a/k/a Jacsen Chasma, Rothschild Pierre-Louis a/k/a Louis R. Pierre a/k/a Pierre Louis Rothchild a/k/a Pierre-

Louis Rothschild, Vladine Mathier, Lionel Charles, Jean Luckner Celine, Benfakha Habib, Mohamed A. Mostefasidebakly, Jaden Pompey, Kareema Mitchell, Elaine Jacques, Fernando Sterling, Denis Pierre-Louis, Benoit Edouard, Maureen Crooks, Peter Jean, Benigno R. Sales, Jr., M.D., Yim Joon, and Dr. Ho Yim, P.D.M. (“Individual Defendants”), and High Quality Medical P.C., Mobile Medical & Diagnostic PLLC, Infinity Health Products Ltd., Ave P Rehab & Medical Plaza, P.C., Bay Ridge Acupuncture P.C., Highland Park Chiropractic, P.C., A Plus Medical, P.C., B.R. Sales, M.D., P.C., East West Acupuncture NY, P.C., Evolution Chiropractic P.C., Sharp Radiology P.C., Advanced Rehab Care PT PC, Mutual Care Medical Supply, Inc., Park Slope Medical and Surgical Supply, Inc., East-West Top Medical P.C., Leica Supply, Inc., Orient Health Care Acupuncture, P.C., Valley Psychological, P.C., CB Chiropractic Limited Liability Company, Doctor Richard Medical P.C., Meridian Medical of NY, P.C., Meridian Medical, P.C., Nature Acupuncture, P.C., City Chiropractic, P.C., HK Psychological, P.C., Atlantic Radiology Imaging, Trimed Medical Supply, Inc., Quality Diagnostic Imaging, P.C., Beal-Medea Products, Inc., Matrix Diagnostic & General Medicine, P.C., Atlantic Sports Medicine, P.C., Anesthesia Associates of Bay Ridge, LLP, Bay Ridge Assisting Surgeon, P.C., Psychological Care, P.C., Verranzano Acupuncture P.C., Prima Medical Supply, Inc., Quality Psychological Services P.C., Radiology Today, P.C., New HP Chiropractic P.C., Ortho-Med Surgical Supply, Inc., Omega Medical Diagnostic, P.C., GLM Medical P.C., AA Acupuncture Service, P.C., Align for Health Chiropractic, P.C., Quality Health Products, Inc., PMR Medical and Diagnostic, P.C., Hurgada Physical Therapist, P.C., Canon Chiropractic Care, P.C., Delta Diagnostic Radiology P.C., Natural Therapy Acupuncture, P.C., Arguelles, M.D., P.C., Dover Acupuncture P.C., Flatbush Chiropractic P.C., Y&W Acupuncture PLLC, AP Orthopedic & Rehabilitation P.C., Ortho & Neuro Care P.C., Golden Needle Acupuncture

P.C., Comprehensive Anesthesia Associates, PLLC, Exel Assist Medical P.C., and I.V. Medical Supply Inc. is **granted**. The policies issued to Keith Anthony, Christopher Hamilton, Claude Adam, Asjeaa Quick, Lionel Marius, Rothschild Pierre-Louis a/k/a Louis R. Pierre a/k/a Pierre Louis Rothchild a/k/a Pierre-Louis Rothschild, Itlande Pamphile, Ronald Duprera, Jamel Haile, Jean Toussiant, Delano Meek 1 and 2, Sheldon A. Pompey 1 and 2, Francisco Tang a/k/a Francois Tang, Clinfford Berson, Melande C. Joseph a/k/a Melande Joseth 1, 2 and 3 are null and void with respect to the aforementioned accidents, as a result of which Progressive has no duty to defend any of the defaulting defendants under those policies in any action or proceeding brought to recover damages as a result of those accidents or to provide coverage for any claims for no-fault or uninsured motorist coverage made by any of the defaulting defendants under those policies in connection with those accidents. In addition, Progressive is entitled to reimbursement of any claims paid to or on behalf of any of the defaulting defendants to any of the defaulting defendants, as well as an award of costs and attorneys' fees.

Progressive's application for an extension of time to serve defendants Eric Leon, John Smith, Jean Icart, Jamel Haile, Evan Debrosse a/k/a Yvens Debrosse, John Anderson, Jean Toussaint, Carlo Toussiant, Krystal M. Wilkerson, Krystal Washington, Christopher Hamilton, Bryan Thompson a/k/a Brian Thompson a/k/a Bryant Thompson, Keisha Thompson, Julie Thompson, Itlande Pamphile, Ronald Duprera, Michel Jean, David Fey, Golreem Pierre Remy, Sadoul Prudent, Lionel Marius, Robinson Honore a/k/a Honore Robinson, Marc Pierre-Louis, Natarigha Mejia, Asjeaa Quick, Adley LaForest, Jerry Myers, Vladymir Jean, Mirthal Jourdain, Claude Adam, Claudia Richmond Mel Chui Leung, Tina McCoy, Jhorry Picsoe, Sheldon A. Pompey, Magilie Exil a/k/a Magalie Exil, Jahsiya Pompey, Francisco Tang a/k/a Francois Tang, Hyacinthe Elie Maude a/k/a Hyacinthe Elie-Maude,

Carlos Grenald, Clinfford Berson, Jeff Berson, Marie Joseph a/k/a Marie Evelyne Joseph, Carlyle Ross, Carlos Suarez, Maria Castro, Sean Marquez, Melande C. Joseph a/k/a Melande Joseth, Roberson Delmas, Lovely Jacques, Claudia A. Gerarde, Carlos Perez, Mohamed Gaya, Raphael Jean, and Michael Milfort Getro a/k/a Milfort Getro pursuant to CPLR 306-b and for substituted service on those defendants pursuant to CPLR 308(5) **is granted**. They have established that the methods for service set forth in CPLR 308(1),(2) and (4) are impracticable under the circumstances. State Street Bank and Trust Co. v Coakley, 16 AD3d 403 (2nd Dept. 2005), lv den., 5 NY3d 746 (2005), citing CPLR 308; Home Federal Sav. Bank v Versace, 252 AD2d 480 (2nd Dept. 1998); OCI Mortgage Corp. v Murphy, 258 AD2d 633 (2nd Dept. 1999).

Progressive has not established reasonable diligence in attempting to serve the defendants Nadil Sanchez, Kamara Supplies and Rehab Medical, P.C. The “sheer number of defendants,” standing alone, hardly suffices particularly in view of the fact that this action was commenced on or about October 6, 2008 and this motion was not made until May 14, 2010. See, Calloway v Wells, 79 AD2d 786 (2nd Dept. 2010), citing Leader v Maroney, Ponzini & Spencer, 97 NY2d 95, 105-106 (2001); Bumpus v New York City Transit Authority, 66 AD3d 26 (2nd Dept. 2009); Valentin v Zaltsman, 39 AD3d 852 (2nd Dept. 2007); Kazimierski v New York University, 18 AD3d 820 (2nd Dept. 2005); Wilkins v Burgess, 25 AD3d 794 (2nd Dept. 2006).

Subsequent to the original submission date of this motion, the Court received a Stipulation from the Plaintiff's attorney, dated June 23, 2011, discontinuing without prejudice this proceeding against the following defendants: Krystal M. Wilkerson, Krystal Washington, Itlande Pamphile, Lionel Marius, Natiarigha Mejia, Asjeaa Quick, Claude Adam, Mel Chui Leung, Carlos Grenald, Carlos Suarez, Claudia A. Gerarde, Mohamed Gaya and Raphael Jean.

Thus, after due deliberation, it is

ORDERED, that the plaintiffs' motion for a default judgment is **granted as hereinabove stated**; and it is further

ORDERED, that the action is permitted to be **discontinued without prejudice** against defendants Krystal M. Wilkerson, Krystal Washington, Itlande Pamphile, Lionel Marius, Natiarigha Mejia, Asjeaa Quick, Claude Adam, Mel Chui Leung, Carlos Grenald, Carlos Suarez, Claudia A. Gerarde, Mohamed Gaya and Raphael Jean; and it is further

ORDERED, that relief requested from defendants Keith Crockell, Ashaina Cumberbatch, Thomas Cox and Li-Elle Service is denied as such individuals are not named in the summons filed herein; and it is further

ORDERED that the Summons in the above-entitled action be served on Eric Leon, John Smith, Jean Icart, Jamel Haile, Evan Debrosse a/k/a Yvens Debrosse, John Anderson, Jean Toussaint, Carlo Toussiant, Christopher Hamilton, Bryan Thompson, a/k/a Brian Thompson a/k/a Bryant Thompson, Keisha Thompson, Julie Thompson, Ronald Duprera, Michel Jean, David Fey, Golreem Pierre Remy, Sadoul Prudent, Robinson Honore a/k/a Honore Robinson, Marc Pierre-Louis, Adley LaForest, Jerry Myers, Vladymir Jean, Mirthal Jourdain, Claudia Richmond, Tina McCoy, Jhorry Picsoe, Sheldon A. Pompey, Magilie Exil a/k/a Magalie Exil, Jahsiya Pompey, Francisco Tang a/k/a Francois Tang, Hyacinthe Elie Maude a/k/a Hyacinthe Elie-Maude, Clinfford Berson, Jeff Berson, Marie Joseph a/k/a Marie Evelyne Joseph, Carlyle Ross, Maria Castro, Sean Marquez, Melande C. Joseph a/k/a Melande Joseth, Roberson Delmas, Lovely Jacques, Carlos Perez, Nadil Sanchez and Michael Milfort Getro a/k/a Milfort Getro ("Individual Defendants"); Rehab Medical, P.C; and Kamara Supplies, defendants, by publication pursuant to CPLR 308(5), to wit: that the Summons together with the notice to the defendant containing a brief statement of the nature of the action and the relief sought and the sum of money for which judgment may be taken in a case

of default be published in two newspapers, at least one in the English language, in **The New York Post** and **The Brooklyn Daily Eagle** published in the City of Brooklyn, County of Kings, State of New York, both most likely to give notice to the aforementioned defendants herein, once in each of four successive weeks and it is further ordered that the summons, complaint, order and papers on which this order is based shall be filed on or before the first day of publication and that the first day of publication shall be made within 30 days of this order. Service by publication shall be complete on the twenty-eight day after the day of first publication; and it is further

ORDERED, that a copy of this Decision and Order shall be served by first class mail or personally by the plaintiffs upon all defaulting defendants herein.

Settle Judgment on Notice.

This constitutes the Decision and Order of the Court.

Dated: Mineola, New York
September 28, 2011

ENTER:



Handwritten signature of Joel K. Asarch in black ink, written over a horizontal line.

JOEL K. ASARCH, J.S.C.

Copy faxed to:
John McCormack, Esq.
Attorney for plaintiffs

ENTERED
SEP 30 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE