

**SHORT FORM ORDER
SUPREME COURT OF THE STATE OF NEW YORK
PRESENT: HON. KENNETH A. DAVIS, JUSTICE**

Index No.: 01-013229

STATE FARM MUTUAL AUTOMOBILE INSURANCE
COMPANY and STATE FARM FIRE AND CASUALTY
COMPANY,

Trial /IAS, Part 7
Nassau County

Submission Date: 11/26/03

Plaintiffs,

-against-

MOTION SEQ. #6

Individual Defendants: PAATA ABJANDADZE, DEMIS ANDREEV,
ARTHUR ANDRIASOV, PAATA ARAVISELI, MANANA
ARUITNOVI, ZAMIRA ASLANISHVILI a/k/a VILI ASLAHISM,
VYACHESLAV AZAYEV, SHORENA BARBAKADZE, RUSLAN
BASANYUK, EKATERINA BEGIASHVILI, LILYA
BHEUBORSKGYER, ELLA BOBULDLANSKY, ALEXANDER
BOIAKHCHIAN, ANNA BOLOTINSKAYA, VITALI BONDARENKO,
ALEKSANDR BORODHY, PAATA BREGVADZE, BUDGET GROUP,
INC., TAMARA BULAYEVA, ZAZA BURNADZE, ANDREY BYLOV,
MIKHAIL BYLOV, JOSE F. CARDERAS, GURAM
CHAVCHAVADZE, VLADIMIR CHEPEL, RAIBUL CHUBINIDZE,
BETTY CLACKEN, SHAWN COLLINS, ANDRE DAVIS, NIDIO
DELGADILLO, VAISHTANG DIAKONIDZE, ANDRE DRAGAN,
MARINA DUDAURI, TARIEL DUDAURI, ELRAC, INC., VEPKIA
EPKOSHVILI, SERGEY FEDEROV, KENNETH FETHKE,
YEVGENIYA FOMICHYOVAI, NAUM FRANSTER, SONYA
FRANSTER, GALINA FREIMAN, CHRISTINE FRISCIA, MICHAEL
FRISCIA, NATALIA FROLOVA, YACHIN GADJIYAN a/k/a YALCHIN
GADJIYEV, SVETLANA GAITCHIKOVA, IRYNA GALOVKO,
TETYANA GASHKOVA, EFIM GEDELEV, a/k/a YEFIM ZHIDELEV,
IRINA GEGETCHKORI, NANA GERMANIDZE, LIANA
GEVORKOVA, MARK GRINBERG, MELADZE GOCHA, VAZHA
GOCHAISHVILI, IVAN GODERDZISHVILI, FELIX GOFMAN,
KHATUNA GOGBAIDZE, MADONNA GOMEACHVILI, GENNAIDY
GRIVENCHIKOV, YAKOV GUREVICH, GOCHO GUTASHVILI, a/k/a
GOSHA GUTASHVILI, AVTANDIL GVAZDZHIYA, TORE
HAMIDULLAH, PARVIZ HASANOV, HERTZ CORP., EKA
ICHKITIDZE, INFINITY FINANCIAL SERVICES, INC., NONA
IOBASHVILI, VAHKTANG IZORIA, JAYHUN JAFAROV, YURIY
KALAROV, NINO KARDAVA, DAVIT KHIZANISHVILI, EKA
KHIZANISHVILI, KAKHABER KHIZANISHVILI, BESIK
KHUKIANIDZE, LYUDMILA KIFUDYAN, SEMYON KOGAN,
YEFIM KOGAN, SERGEY KOLESOV, NINO KOLOTASHVILI,
VALENTINA KOTELNIKOVA, ALEXANDRE KOZHEVNIKOVA,
KATERYNA KOZHEVNIKOVA, VLAD KOZLOV, GEORGE
KURPRASHVILI, GULKIN KURPRASHVILI, ADRIANA KYZYKI,
ADIM LADFUAGAIEV, GAYLA LAISCHEVCEVA, a/k/a GALINA
LAISHEVTSEVA, SERGEY LEBEDEV, LEONID LESKOV, TAMAZ
LETODIANI, HUA LIN, YAN GUAN LIN, MERAB LIPARTIA, DAVID
LOLASHVILI, KATTYA LOPEZ, VARDIO MAKHARDIZ, SABUKHI

MAMEDOV, NINO MAMPORIA, EMIL MANUKIAN, SUSANA MATEVOSIAN, GIVI MCHEDLISHVILI, MARK MEELEY, GELA MESKISHVILI, MICHAEL MESTVIRISHVILI, ALDO MERAGLIA, DIANE MERAGLIA, JULIE ANN MERAGLIA, ROMANOZ MIKAELIAN, FARIJ MOHAMED, DMITRIY MOROZOV, VERA MOROZOV, a/k/a VERA MOROZOVA, KOBAMTCHEDLISHVILI, OREST MYTSKIV, KATAZINE NABIDAZEI, WILLIAM NELSON, LARISSA NORKINA, LARISA NUGZARASHVILI, OREST INC., MARINA ORZHEL, VIRGINIA PACIELLO, VITO PACIELLO, VALENTINA PETRENKO, GALINA PILNER, BORIS PLESHKOV, BESIK POCHKMIDZE, KIRILL RAPIOVETS, ASTRID RIVERA, JESUS VELEZ RIVERA, RAFFAELE ROMAGNUOLO, MILIYA ROZHENKO, YIN KWAN RUAN, SHU MING RUAN, VITALY RUJANFKIY, DONNA SAGLAM, IHAB SALEH, DOMENIC SALLEY, SHARON HARRISON-SALLEY, BONDO SAMANISHVILI, MANANA SAPONOVA, RENAT SARAZUTDINOV, OLGA SENKEVICH, KOSTY SEROEV, FRANCES SFALANGA, PAVEL SHAVISHVILI, GALENA SHKREBA, LARISA SHULGA, VOLADYMYR SHYLBERG, LYUDMILA SIDELNIKOVA, GEORGI SIMONYAN, SERGO SIMONYAN, LEYLA SIRADZE, ALEXANDRE SKALKA, TULPANA TABARU, ZURAB TALAKHADZE, LUNG SANG TAN, TANATINI TCABASHVILI, ALAVIDZE TENGIZ, OLEG TERENTIEVA, SVETLANA TERENTIEVA, RIVAS TODRIA, EMZARI TURKIA, NICHOL CHESTER TYRENE, UNITED-2 INC., MZIA USTARASHVILI, IRENE VAINBLAT, RAYN VAYNSHREN, BRYAN VOLPINI, YUDIN VYACHSLAV, WAVES OF WHEAT, INC., ROSEANN WEINEIER, LORA YAKUBOVA, ANDREY YASHCHENGKO, PETR YASHCHENGKO, ALEXANDER YEVDOKIMENKO, KYONG YOON, SYDNEY YOON, NODAR ZAKAIDZE,

Health Care Defendants. A&A TRANSPORTATION, INC., A&S MEDICAL, P.C., A. KHODADADI RADIOLOGY, P.C., AAA MEDICAL EQUIPMENT & SUPPLY, INC., ACTIVE BUSINESS CORP., INC., ADAM'S MEDICAL SUPPLY, INC., ADVANCED CHIROPRACTIC SPINAL CARE, P.C., ADVANCED OSTEOPATHIC SERVICES, P.C., ADVANCE RADIOLOGICAL IMAGING ASSOCIATES, ALEXANDER MERSON, M.D., ALEXANDER TVERSKEY, M.D., ALFA DIAGNOSTIC IMAGING, P.C., ALFA MEDICAL SUPPLIES, INC., ALGAR MEDICAL SUPPLIES, INC., ALL MENTAL CARE MEDICINE, P.C., ALL NEUROLOGICAL SERVICES, P.C., ALLEVIATION SUPPLY INC., A.M. MEDICAL, P.C., AMERIMED MEDICAL & SURGICAL SUPPLIES, INC., AMOL, INC., AMR A. NAYEL, M.D., A.N. MEDICAL SERVICES, P.C., ANDREW B. WEISS, M.D., ANSCONA AMBULETTE SERVICE, INC., ASCOT RADIOLOGY IMAGING, P.C., A.T. MEDICAL, P.C., ATLANTIC PT, P.C., AVIR SURGICAL SUPPLIES, INC., BACKCARE CHIROPRACTIC, P.C., BAY MEDICAL SERVICES, P.C., BAYRIDGE MEDICAL & SURGICAL SUPPLY, INC., BENSONHURST CAR SERVICE CORPORATION, INC., BIG APPLE MEDICAL CARE, P.C., BORIS SAPOZHNIKOV, BOVA SURGICAL & MEDICAL SUPPLIES, INC., BRAVO MEDICAL SUPPLY, BRIAN CHANG, BROOKLYN CHIROPRACTIC, P.C., BROOKPHIL MEDICAL CARE, P.C., BZ CHIROPRACTIC, P.C., CARMEN I. OLMEDO, M.D., CENTRAL RADIOLOGY SERVICES, P.C., CHI-POINT ACUPUNCTURE, P.C.,

CHIROPRACTIC FUNCTIONAL REHABILITATION, P.C.,
CHIROPRACTIC SPINE & BODY CARE, P.C., CITYWIDE MEDICAL
SERVICES, P.C., CITYWIDE SOCIAL WORK & PSYCHOLOGICAL
SERVICES, PLLC, CLEAR LIGHT PSYCHOLOGICAL SERVICES,
P.C., CLEAR MIND PSYCHOLOGICAL SERVICES, P.C., COAST TO
COAST EXPRESS, COLUMBIA ACUPUNCTURE, P.C., COMPLETE
RADIOLOGY, P.C., COMPREHENSIVE CONSULTING SERVICES,
INC., COMPREHENSIVE MENTAL ASSESSMENT & CARE, P.C.,
COMPREHENSIVE MEDICAL DIAGNOSTIC TESTING, P.C.,
DANIEL BOKOR, DC, DEAJESS MEDICAL IMAGING, P.C.,
DEFINITIVE MEDICAL CARE, P.C. a/k/a NEW PSYCHOLOGICAL
SERVICES, P.C., DENTAL DIAGNOSTIC, P.C., DJS MEDICAL
SUPPLIES, INC., EAST ACUPUNCTURE, P.C., EAST COAST
MEDICAL SUPPLIES, INC., EDISON MEDICAL SERVICES, P.C.,
EMILYA MIZHERITSKAYA, M.D., EMPIRE TRANSPORTATION
a/k/a REM TRANSPORTATION, INC., ENVISION DIAGNOSTIC
SERVICES, INC., EVE PHARMACY, INC., EVILIO ECHENIQUE,
M.D., EX-L AMBULETTE SERVICE, INC., FIRST DIAGNOSTIC
IMAGING, P.C., FUNCTIONAL PHYSICAL THERAPY, P.C., G&G
MEDICAL ASSOCIATES, LLP, G&M AMBULETTE SERVICE, INC.,
G.A. PHYSICAL THERAPY, P.C., GABRIEL FELDMAR, PhD, GEL'S
TRADING CO., CORP, GLOBAL MEDICAL CARE, O.L., P.C.,
GOLDEN TOUCH PHYSICAL THERAPY AND REHABILITATION,
P.C., GREENPOINT DENTAL GROUP, P.C., G.X. ACUPUNCTURE,
P.C., HAIMISH TRANSPORTATION SERVICE, INC., HEALTH &
WELLNESS CHIROPRACTIC, P.C., HEALTH VALUE MEDICAL,
P.C., HEALTH LINE MEDICAL SUPPLY, INC., HEALTHY
LIFESTYLE - SVO INC., HIA-BENSONHURST IMAGING
ASSOCIATES L.L.P., IGOR KHELEMSKY, M.D., IMPERIAL
SURGICAL & MEDICAL SUPPLY, INC., INTERNATIONAL
TRADING, INC., IVB MEDICAL SUPPLY, INC., JAMES T,
SANTORO, D.C., JEFF CHASE, M.D., P.C., JERUSALEM CAR &
LIMO SHONNER SHABAT, INC., JOHN DOE 1, JOHN DOE 2, JOSEF
SHERMAN, PHYSICIAN, P.C., JOSEPH MECCA, M.D., JRWB
DIAGNOSTIC IMAGING, P.C., a/k/a OCEAN OPEN MRI, P.C., JULIA
ACUPUNCTURE, P.C., J.Y. PROFESSIONAL RADIOLOGY, P.C.,
KAIZEN ACUPUNCTURE, P.C., KANTON ACUPUNCTURE, P.C.,
KEYSTONE MEDICAL SUPPLY, INC., L&A MEDICAL SUPPLIES
CORP., L&M CHIROPRACTIC, P.C., LIBRA MEDICAL SUPPLY,
INC., LIFE ACUPUNCTURE, P.C., LIFETIME MEDICAL SUPPLY,
INC., LISAN MEDICAL SUPPLIES, INC., LISANN NEIL MICHAEL,
M.D., LMK PSYCHOLOGICAL SERVICES, P.C., LONG YAN
ACUPUNCTURE SERVICES, P.C., LI FIRST AID MEDICAL SUPPLY,
INC., LUTHERAN MEDICAL CENTER EMERGENCY PHYSICIANS,
P.C., LUTHERAN MEDICAL CENTER, LYUDMILA LVOV, M.D.,
M.A.G. MEDICAL, P.C., MAIMONIDES MEDICAL CENTER,
MALIBU ACUPUNCTURE, P.C., MARK KOSTIN MEDICAL, P.C.,
MARINA MERSON, LAC, MB HEALTHBEAT MEDICAL, P.C.,
MEDICAL ACUPUNCTURE-AHOY, P.C., MEDICAL EXPERTISE,
P.C., MEDTRON INC., MEGARAY MEDICAL, P.C., METAL
DRAGON ACUPUNCTURE, PLLC., METRO MEDICAL
DIAGNOSTICS, P.C., MICRO SOLUTION PROVIDER, INC.,
MIDBORO MEDICAL HELP, P.C., MIDWAY MEDICAL SUPPLY,
INC., MIDWOOD ADVANCED MEDICAL SERVICES, P.C.,
MINGMEN ACUPUNCTURE SERVICES, P.C., MN DENTAL

DIAGNOSTIC, P.C., MODERN PSYCHIATRIC SERVICES, P.C.,
MULTIQUEST PSYCHOLOGICAL, ACUPUNCTURE, MASSAGE,
THERAPY & SOCIAL WORK SERVICE, PLLC, MYOFACIAL
DENTAL DIAGNOSTIC, P.C., NACHUM LEVIN, M.D.,
NEUROHEALTH PLUS MEDICAL, P.C., NEUROLOGY GROUP,
PLLC., NEW ABILITY MEDICAL, P.C., NEW MILLENNIUM
CHIROPRACTIC, P.C., NEW MILLENNIUM MEDICAL, P.C., NEW
PSYCHOLOGICAL SERVICES P.C., NEW YORK CITY HEALTH AND
HOSPITAL, NK MEDICAL SERVICE, P.C., NORTH BRONX
MEDICAL, P.C., NORTH SHORE UNIVERSITY HOSPITAL, NORTH
STAR MEDICAL, P.C., NORTH STAR PHYSICAL MEDICINE, PLLC.,
NOSTRAND MEDICAL, P.C., NY MEDICAL & DIAGNOSTIC, P.C.,
OLEG NASHTATIK, DDS, OMEGA PLUS MEDICAL SUPPLIES, INC.,
OP MEDICAL DIAGNOSTIC, P.C., OPTIMUM CHOICE
ACUPUNCTURE, P.C., PARK AVENUE SOUTH CHIROPRACTIC,
PARK RADIOLOGY, P.C., PARK SLOPE MEDICAL DIAGNOSTICS,
P.C., PARKVILLE MEDICAL, P.C., PARKWAY HOSPITAL,
PARKWAY MRI, P.C., PHYLLIS OLSEN, LAC., PLP ACUPUNCTURE,
P.C., PRECISION DIAGNOSTIC IMAGING, P.C., PERSONAL TOUCH
MEDICAL, P.C., PREFERRED CAR SERVICE, INC., PREMIER
MEDICINE, P.C., PROGRESS IMAGING, P.C., PSYCHMETRICS
MEDICAL, P.C., PSYCHOLOGICAL HEALTH CARE OF NEW YORK.,
P.C., PUSPA BHANSALI, M.D., QB MEDICAL, P.C., QUEENS
MEDICAL, P.C., QUENTIN MEDICAL SERVICES, P.C., RAINBOW
MEDICAL SUPPLY, INC., RAPID AMBULETTE, INC., REISS
THERAPEUTIC SERVICES CSW, P.C., RELIEF MEDICAL SUPPLY,
INC., RENA KAHANUKAYVA, DO, RESONANCE RADIOLOGY,
P.C., RKL NATIONWIDE DISTRIBUTORS, INC., ROBERT
CONCIATORI, M.D., ROBERT L. BARD, M.D. (CR), RONALD L.
COLLINS, M.D., ROYAL MEDICAL CARE, P.C., ROYAL SURGICAL
SUPPLY, INC., SALVATORE LENTINI, DC., SAMIMAX MEDICAL,
P.C., SCL MEDICAL SERVICES, P.C., SCRIPT CITY RX, INC.,
SELECT CHIROPRACTIC, P.C., S.G. MEDICAL CARE, P.C.,
SHARMA MEDICAL SERVICES, P.C., SHDLOM GOOTZEIT, M.D.,
SIGMA INSTRUMENTS, INC., SIGMA SURGICAL SUPPLIES, INC.,
SLON MEDICAL INSTRUMENT, LLC., SMALL HOUSE
CHIROPRACTIC, P.C., SOCRATES PSYCHOLOGICAL SERVICES,
P.C., SOURCE CHIROPRACTIC, P.C., SOUTH SHORE MEDICAL OF
NY, P.C., STAR MEDICAL PRACTICE, P.C., STATE GENERAL
MANAGEMENT CORP. , STATEN ISLAND UNIVERSITY HOSP.,
SUNSET MEDICAL, P.C., SUPERIOR OXYGEN & ORTHO SUPPLIES,
INC., TAMAR TRANSPORTATION CORP., INC., TC AMBULANCE
CORP., TEAM AMBULETTE SERVICES, INC., TEODORO Y. PANG,
M.D., P.C., THE PARKWAY HOSPITAL INC., THIRD AVENUE
RADIOLOGY AND IMAGING, P.C., TRADITIONAL
ACUPUNCTURE, P.C., TRANS MEDICAL SUPPLIES, INC., TRI-
STATE SURGICAL SUPPLY, INC., TYI MEDICAL SUPPLIES, INC.,
ULTIMATE MEDICAL SUPPLIES, CORP, UNIVERSAL
ACUPUNCTURE PAIN SERVICES, P.C., UNIVERSITY GROUP
MEDICAL ASSOCIATES, P.C., UNLIMITED MEDEL EQUIPMENT,
INC., URBAN MEDICAL DIAGNOSTICS, P.C., U.S. MEDICAL, P.C.,
V&L TRANSPORTATION SERVICE, INC., V&M
TRANSPORTATION, CORP., VALENTIN AVANESSOV, M.D.,
VALERY BERGER, M.D., VERONA MANAGEMENT, INC.,
VLADIMIR KALIKA, M.D., VICTORY MEMORIAL HOSPITAL, VIP

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EXPRESS MEDICAL SUPPLIES, INC., VISTA TRANSPORTATION
NY, INC., VITALITY CHIROPRACTIC, P.C., VITO A. LAFERRERA,
D.C., VLADIMIR ZLATNIK, M.D., P.C., V.N.V. MANAGEMENT,
INC., VOLGA TRANSPORTATION CORP., WANG ACUPUNCTURE
SERVICE, P.C., WEST CHIROPRACTIC, P.C., Y.S.L. MEDICAL
SUPPLY, YURI BROSGOL, M.D., INC., ZITTA ROYZMAN, D.D.S., 20
AVENUE MEDICAL SUPPLY, INC.

Defendants.

-----X

The following papers read on this motion:

Notice of Motion/ Order to Show Cause.....	X
Answering Papers.....	X
Reply.....	
Briefs: Plaintiff's/Petitioner's.....	
Defendant's/Respondent's.....	

Upon the foregoing papers, defendants Valentina Kotelnikive and Riva Todria's motion for an order lifting and vacating the current stay of any and all future proceedings, directing the plaintiff to indemnify the defendants, directing the plaintiff to pay sum, monies damages awards and/or benefits to defendants and permanently staying plaintiff from bringing and/or initiating any other future proceedings with regard to these defendants is denied in its entirety.

The instant action seeks a declaratory judgment declaring that plaintiff does not have a duty to defend or indemnify the defendants based on the fact that numerous motor vehicle accidents were intentionally staged thereby constituting insurance fraud. A default judgment was granted as to moving defendants. The court hereby deems the instant application as a motion to vacate the default as well as seeking the additional relief.

In order to vacate a default the defaulting party must demonstrate that they had a reasonable excuse for the delay, that they have provided a meritorious defense, that the default was not willful and that the plaintiff will not be prejudiced. Lichtman v. Sears, Roebuck & Co., supra. A default by a defendant should be vacated where there is "minimal prejudice caused by the defendant's short delay in

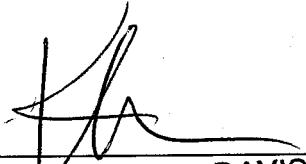
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answering, as well as the public policy in favor of resolving cases on the merits." Classie v. Stratton Oakmont, Inc., 236 A.D.2d 505, 653 N.Y.S.2d 377 (2d Dep't 1997). Here, defendants have not demonstrated that there was a reasonable excuse, that the default was not willful, that the plaintiff will not be prejudiced, and that they have a meritorious defense to the action.

Additionally, by virtue of the recent Second Department decision in State Farm v. Laquerre, 305 A.D.2d 490, 759 N.Y.S.2d 531 (2d Dept 2003), the Court finds itself compelled to deny the moving defendant's motion. See, also, Metro Medical Diagnostic v. Eagle Insurance, 293 A.D.2d 751, 741 N.Y.S.2d 284 (2d Dept 2002); GEICO v. Shaulskaya, 302 A.D.2d 522, 756 N.Y.S.2d 79 (2d Dept 2003). The holding in the above mentioned case supports plaintiff's position that the above named defendants are not entitled to recovery notwithstanding their alleged innocence in the perpetration of the fraud.

This constitutes the decision and order of the Court.

Dated: JAN 23 2004



HON. KENNETH A. DAVIS s.c.

ENTERED

JAN 30 2004

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**