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SUPREME COURT - STATE OF NEW YORK

Present:

HON. ARTHUR M. DIAMOND
Justice Supreme Court

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PROGRESSIVE ADVANCED INSURANCE COMPANY
and PROGRESSIVE MAX INSURANCE COMPANY,

Plaintiffs,

-against-

TRISTAN GUERRIER, RAYMOND CARR, DEQUONE WOODFORD, ("Claim 1 Defendants"), ALJALON DOUGLAS, PAUL DOUGLAS, DAVID DOUGLAS, ("Claim 2 Defendants") KARL SILVA, SONJA SHARAI CEPHAS, STEVE SILVA, ERIC SILVA and ANTHONY MATHEWS ("Claim 3 Defendants") (Individual Defendants)

**AMERICAN ASIAN ACUPUNCTURE P.L.L.C.
ATLANTIC RADIOLOGY IMAGING, P.C.
AXON MEDICAL P.C.
BEDFORD MEDICAL CARE, P.C.
DANIEL WALTZ M.D.
DOVPHIL ANESTHESIOLOGY GROUP P.L.L.C.
EXPERT MASSAGE THERAPY P.C.
FIVE BORO MEDICAL EQUIPMENT INC.
FIVE BORO PSYCHOLOGICAL AND LICENSED
MASTER SOCIAL WORK SERVICES P.L.L.C.
GREAT HEALTH CARE CHIROPRACTIC, P.C.
GREAT MEDICAL SERVICES P.C.
HARMONY MEDICAL CARE P.C.
LINDEN EQUIPMENT, INC.
MAGIC TOUCH PHYSICAL THERAPY, P.C.
MOBILITY EXPERTS MEDICAL, P.C.
MODERN CHIROPRACTIC, P.C.
NEW YORK VEIN CENTER, LLC.
NORTH SHORE UNIVERSITY HOSPITAL
PSYCHOLOGICAL YME P.C.
QUEST SUPPLY, INC.
ROM MEDICAL, P.C.
SASAN FAMILY CHIROPRACTIC, P.C.
SAS MEDICAL P.C.
SHAKER HILLS MEDICAL DIAGNOSTIC, P.C.**

TRIAL PART: 10

NASSAU COUNTY

INDEX NO: 010995-11

MOTION SEQ#:2

SUBMIT DATE: 05/11/12

**SHARP VIEW DIAGNOSTIC IMAGING, P.C.
TAE KEUN PARK M.D.,
VNP ACUPUNCTURE, P.C.
("Medical Provider Defendants"),**

Collectively, the Defendants.

-----X
The following papers having been read on this motion:

Notice of Motion1
Opposition.....2
Reply.....3

Motion by the plaintiffs Progressive Advanced Insurance Company and Progressive Max Insurance Company (hereinafter collectively referred to as "Progressive") for an order directing summary judgment pursuant to CPLR§ 3212 against the defendants Sharp View Diagnostic Imaging, P.C., Axon Medical P.C., Five Boro Psychological and Licensed Master Social Work Services PLLC and Linden Equipment, Inc. is granted.

This is an action pursuant to CPLR§ 3017(b) for a declaratory judgment. The within action arises out of a series of allegedly fraudulent claims for no-fault reimbursement, UIM benefits and liability coverage submitted in connection with alleged "staged accidents." A deliberate collision caused in furtherance of an insurance fraud is not a covered accident. *Matter of Metro Med. Diagnostics v Eagle Ins. Co.*, 293 AD2d 751. Plaintiff must establish a *prima facie* right to judgment in the context of a "staged accident." There are several factors that are indicia of a "non-accident," including: (i) more than one collision within a short time of the policy's inception, (ii) cancellation of the policy shortly thereafter for non-payment of premiums, (iii) similarities among the collisions and interrelationships among the parties, and (iv) inconsistencies in testimony regarding the circumstances of the subject collision and the identities of the individuals involved. Such factors, in various combinations, have been held to constitute a compelling and persuasive body of circumstantial evidence that the underlying loss resulted from an intentional collision staged for the purpose of insurance fraud. *New South Ins. Co. v Harris*, 2011 NY Misc Lexis 4794; 2011 NY Slip Op. 32645(V). *See also Matter of National Grange Mut. Ins. Co. v Vitebskaya*, 1 Misc 3d 774; *V.S. Medical Services, P.C. v Allstate Ins. Co.*, 11 Misc 3d 334.

In support of the within motion plaintiff has submitted a sworn affidavit by Brian Stupar, one

of its senior medical representatives responsible for the daily maintenance of the files regarding the within claims.

Progressive issued a motor vehicle insurance policy to Tristan Guerrier for a seven year old 2004 Dodge Intrepid. The policy was in effect on 1/11/11. The accident occurred on 1/13/11, just two days after the policy inception. Raymond Carr was the alleged driver; and Deaquone Woodford and Tristan Guerrier the passengers.

Progressive issued a motor vehicle insurance policy to Aijalon Douglas for a sixteen year old 1995 Nissan Maxima. The policy was in effect on 1/29/11. The accident occurred on 2/9/11, just ten days after the policy inception. Aijalon Douglas was the alleged driver of the 1995 Nissan Maxima and Paul Douglas and David Douglas the passengers.

Progressive issued a motor vehicle insurance policy to Karl Silva for a thirteen year old 1998 Mercedes ML3420. The policy was in effect on 12/12/10. Less than two months later, on 2/19/11 the accident occurred. Sonju Sharai Cephas was the alleged driver of the 1998 Mercedes; and Steve Silva, Eric Silva and Anthony Matthews the passengers in the vehicle.

In support of the motion, the plaintiff's representative in his sworn affidavit asserts the following to demonstrate that the three accidents were "staged":

The same person took out all three policies, as evidenced by the same computer "cookie" - ACF10DD55B4048F69C9C6609FEDFF540 - left when the policies were applied for online on the internet.

All occupants of the Progressive vehicles in all three loses went to the same medical providers for the same medical services claimed by the Medical Provider defendants.

The Tristan Guerrier policy was purchased over the internet using a prepaid check in the name of "Rafael Rodriguez." This down payment was from a bogus bank account. Progressive was duped into providing coverage for zero dollars. The defendants made sure to cause the Guerrier loss prior to Progressive being able to cancel the policy for non-payment on 3/13/11.

Tristan Guerrier furnished a policy address in Binghamton, New York but the vehicle was registered to him in Buffalo, New York at 34 Marion Street.

Tristan Guerrier's address with a closed bank account was 205 East 17th Street, Brooklyn, New York. This is the same address as Eric Silva and Anthony Mathews in the Silva claim.

Anthony Mathews was arrested on 2/1/11 for insurance fraud, attempted grand larceny,

falsifying business records and offering a false instrument for a loss that occurred on 10/4/10. Less than three weeks later he claims to be a passenger in the Silva vehicle for the 2/19/11 loss.

Tristan Guerrier, Raymond Carr and Paul Douglas all issued fake identifications at Bedford Medical Care, PC with bogus addresses.

Tristan Guerrier furnished a fake social security number in his application for no-fault benefits.

Raymond Carr, the driver of the Tristan Guerrier vehicle for the 1/13/11 loss, furnished a fake social security number in his application for no-fault benefits.

Paul Douglas, a claimed passenger in the Aijalon Douglas loss, furnished a fake social security number in his application for no-fault benefits.

Progressive attempted to contact Karl Silva by phone. Mike Silva answered and told Progressive that Karl Silva was in upstate New York. On the same date Progressive traveled to Karl Silva's residence at 287 Fenimore Street in Brooklyn, and Karl Silva was there. Karl Silva then told Progressive that someone known to him only as "Caesar" asked Karl Silva to let him use his name and personal information to register and insure the 1998 Mercedes MD320 that was involved in the 2/19/11 loss. Despite his name appearing in the police report as the registered owner, he has no idea who Sonju Sharai Cephas, Steve Silva, Eric Silva and Anthony Mathews are, who all claimed to occupy Karl Silva's vehicle for the subject loss. He also said that he has no relatives named Steve Silva or Eric Silva, and, he denied having a relative named Mike Silva. He also denied ever using the phone number that was used for the policy, which Mike Silva answered when called.

According to Karl Silva, Caesar's phone number is 347-707-6247. This is the same telephone number used by Raymond Carr, the driver of the Tristan Guerrier vehicle for the 1/13/11 loss.

This same phone number, 347-707-6247, was used by Gavroch Cadet in a 7/23/10 GEICO loss. The address claimed by Gavroch Cadet on the 7/12/10 loss was 34 Marion Street, Buffalo, New York. Gavroch Cadet also had a 7/30/10 loss, and used the 34 Marion Street address. This is the same address that Tristan Guerrier claims he lives at according to the police report and his own sworn EUO testimony.

This same phone number, 347-707-6247, was used by yet another person, Rasheen Gatlin, who had a loss on 10/20/10 involving 21st Century Insurance Company. Rasheen Gatlin's address

for that loss was 38 Marion Street, Buffalo, New York. Progressive determined that Rasheen Gatlin actually lives at 309 East 19th Street, Apt. 6B, Brooklyn, New York.

Bedford Medical Care, PC submitted the no-fault application for every single person claiming treatment for all three losses: Tristan Guerrier, Raymond Carr and Deaquone Woodford for the 1/13/11 Guerrier loss; Aijalon Douglas, Paul Douglas and David Douglas for the 2/9/11 Douglas loss; and Sonji Sharai Cephas, Steve Silva, Eric Silva and Anthony Mathews for the 2/19/11 Karl Silva loss.

The plaintiff has submitted detailed charts to demonstrate the overlap of the Medical Provider defendants relating to each of the three (3) subject accidents. The charts show that all the “treatment” for which each of the Medical Provider defendants seek reimbursement is based on the referral from one or more of the Medical Provider defendants to another (Stupar Affidavit in Support, ¶¶ 11-16).

In order to investigate the losses, Progressive requested the Examination Under Oath (EUO) of the parties to the Progressive vehicles. Plaintiff established that Raymond Carr, Triston Guerrier, Eric Silva and Steve Silva, materially misrepresented themselves at the EUO (Stupar Affidavit, ¶¶ 10.2-.21.28 and 28). David Douglas Aijalon Douglas, Sonji Sharai Cephas, Anthony Mathews failed to appear for their Examination Under Oath (Stupar Affidavit, ¶¶ 22,23, 24, 25 and 26).

Defendant Axon Medical P.C. has agreed to waive all claims in relation to this action, and executed a stipulation of discontinuance.

Progressive has established its *prima facie* entitlement to judgment against the answering defendants as a matter of law. *See State Farm Mut. Auto Ins. Co. v Laguerre*, 305 AD2d 490. The court is presented with three insurance policies all taken out within one (1) month of each other. Progressive asserts the three insurance policies were taken out by the same person, as evidenced by the same computer “cookie” – ACF10DD55B40448F69C9C6609FEDFF540 – left when the policies were applied for over the internet. The subject loss under the policy of Tristan Guerrier occurred on 1/13/11, just two (2) days after the policy’s inception. The subject loss under the policy of Aijalon Douglas occurred on 2/9/11, just eleven (11) days after such policy’s inception. Finally, the subject loss under the policy of Karl Silva occurred on 2/19/11, just under two (2) months after such policy’s inception. All occupants of the Progressive vehicles in all three losses went to the same exact medical providers for the same medical services claimed by the Medical Provider

defendants.

Once a movant has shown a *prima facie* right to summary judgment, the burden shifts to the opposing party to show that a factual dispute exists requiring a trial, and such facts presented by the opposing party must be presented by evidentiary proof in admissible form. *Friends of Animals, Inc. v Associated Fur Mfgs., Inc.*, 46 NY2d 1065. Conclusory statements are insufficient. *Sofsky v Rosenberg*, 163 AD2d 240, *aff'd* 76 NY2d 927; *Zuckerman v City of New York*, 49 NY2d 557.

In opposition, the attorneys for defendants argue that there is not expert computer testimony to establish that the same “cookie” computer was used to initiate all policies. Further, defendants assert that Progressive submitted neither copies of police reports or EUO transcripts. Defendants argue that Progressive did not present “a shred of evidence” from any medical experts establishing that the assignors did not have the injuries they were treated for or that no causal connection existed between the injuries and the accidents is misplaced. It is “black letter law” that if the “accident” was staged and intentional then none of the defendants are entitled to coverage regardless of the injuries and causation. *Matter of Allstate Ins. Co. v Massre*, 14 AD3d 610. Defendants have not offered one iota of probative evidence to rebut Progressive’s *prima facie* showing that the incidents were intentional and “staged.” Defendants have not even submitted an affidavit from any of the assignors or other witnesses to the alleged incidents. Nor have any of the defendants submitted an affidavit from the answering assignee defendants or other probative evidence to refute the showing by Progressive supported by a detailed analysis with an affidavit and charts regarding the “overlap in treatment” (Stupar Affidavit in Support, ¶¶ 12-15). While “unsubstantiated hypotheses and suppositions” are not enough to make out a lack of coverage defense (*see Amstel Chiropractic v Omni Idem. Co.*, 2 Misc 3d 129[A], 874 NYS2d 918, 2004 NY Slip Op. 50088[U], [App Term, 2d & 11th Jud Dists 2004]), it is expected that an insurer’s evidence of a good purposeful collision will often be circumstantial. In the absence of a *mea culpa* from one of the participants, the insurer – and ultimately the court – must examine the facts and circumstances of the incident to determine whether they give rise to an inference of lack of coverage. (*See, e.g., A.B. Med. Servs.*, 7 Misc 3d 822). Circumstantial evidence is sufficient if a party’s conduct “may be reasonably inferred based upon logical inferences to be drawn from the evidence.” (*Benzaken v Verizon Communications, Inc.*, 21 AD3d 864; *Klra v Kalra*, 149 AD2d 409. Price, Richardson on Evidence § 3-202; 206 [Farrell 11th ed]).

The answering defendants cannot succeed in opposing a motion for summary judgment without an affidavit of someone with personal knowledge of the facts and circumstances. The answering defendants have only submitted an attorney's affirmation and their verified pleading. An attorney's affirmation not based on personal knowledge is of no probative or evidentiary significance. *JMD Holding Corp. v Congress Fin. Corp.*, 4 NY3d 373.

Plaintiff's motion for summary judgment is granted. It is the judgment of this Court that Progressive has no contractual duty to the answering defendants to provide indemnity or liability coverage in any pending or future action for personal injury or property damages, nor any duty to provide coverage for any claims of no-fault and/or uninsured motorist coverage made by any of answering defendants and/or their assignees, arising from the underlying "accidents" of 1/13/11, 2/9/11 and 2/19/11.

This decision is the order of the Court. All proceedings under Index No. 10995/11 are terminated.

This constitutes the decision and order of this Court.

DATED: July 9, 2012

ENTERED

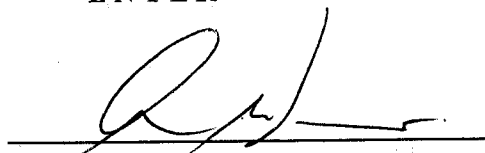
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**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

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