

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - COUNTY OF NASSAU
PRESENT: HONORABLE JOHN M. GALASSO, J.S.C.

PROGRESSIVE PREFERRED INSURANCE COMPANY,
Plaintiff,

Index No. 007071/09
Sequence #002
Part 37

- against -

ROBERTSON VALLE AKA ROBERTSON VALL,
BRIDGITTE P. OLIVER, HERLENE MCNAIR, YVONNE
WILLIAMS, MEI HUA CHEN and YIN P ZHU
Individual Defendants,

01/03/11

- and -

CITY DENTAL SERVICES, P.C., CENTRAL RADIOLOGY
SERVICES, P.C., PARSONS MEDICAL SUPPLY, INC.,
SYNERGY FIRST LLC, A.S. ACUPUNCTURE, P.C., ELS
MEDICAL SERVICES, P.C., DOVPHIL ANESTHESIOLOGY
GROUP PLLC, MODERN CHIROPRACTIC P.C., ALL CITY
FAMILY HEALTHCARE CENTER INC., MARINA GALPERIN,
M.D., PAUL BIDLE, M.D., UNIQUE CHIROPRACTIC CARE, P.C.,
SKY CHIROPRACTIC P.C., AVE K MEDICAL, P.C.,
and ASNODIN DIANALAN, PT.
Provider Defendants,

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Upon the foregoing papers, plaintiff Progressive Preferred Insurance Company (Progressive's) motion pursuant to CPLR 3212 for summary judgment against defendants Parsons Medical Supply, Inc. (Parsons), Herlene McNair and Yvonne Williams is denied at this juncture.

This is an action which arises out of fraudulent claims for no-fault reimbursement, in/under insured motorist (UIM) benefits and liability coverage in connection with alleged staged accidents resulting from a policy set up by an insurance broker, Nancy Credidio a/k/a Nancy Credidio for co-defendant Roberson Valle a/k/a Robertson Vall and others. Ms.Credidio, who received kickbacks from provider defendant Ave K Medical, P.C. in order to stage accidents to commit insurance fraud, pled guilty to scheming to defraud in the second degree. The undersigned has not been provided with a copy of her allocution or other means of identifying the policy holders involved in defrauding plaintiffs' insurance company.

Several other policies brokered by Credidio resulted in default declaratory judgments in actions filed in this Court. However, none reached the merits of the claim (see Index Numbers 20932/08, 21882/08, 7072/09 and 20931/08). This includes, the undersigned's award of a default judgment against 10 of the provider defendants on October 8, 2009.

Although, it is uncontested that the Department of Justice in the Southern District of New York arrested 10 individuals associated with Ave K Medical P.C. on federal charges of conspiracy to commit health care and mail fraud for billing no-fault claims for treatment that were either not provided or medically unnecessary, the Court has not been informed of the results of these arrests. *

In the complaint at bar, it is alleged co-defendants Chen and Zhu owned and operated a 2000 Toyota involved in a factitious accident on October 28, 2007 with a 1992 Lexus sedan driven by co-defendant Bridgette Oliver and insured by plaintiff's policy with co-defendant Valle, which was brokered through Nancy Credidio.

Defendant McNair, a passenger in the Lexus testified at her examination under oath (EUO) conducted pursuant to policy conditions that she did not know the driver, Bridgette's last name although she had been friends with her for 7 years. At the time of the accident they were traveling to a wake for Bridgette's grandmother when the vehicle was struck on its side. Prior to the impact she was asleep. Defendant McNair stated she had never seen the Lexus before that day or heard of co-defendant Robertson Valle. **

Upon referral from a friend, non-party Veroncia Pitkins, defendant McNair started treatment at Ave K Medical the next day. She stated she was given MRIs and medical equipment for which she received no explanation, results or instructions.

The EUO of defendant Williams is remarkably similar, including the part that she was asleep when the impact occurred on the side of the vehicle. She also received similar treatment as defendant McNair after being referred to Ave K by the same individual, Ms. Pitkins.

Plaintiff also submits the affidavit of its Senior Medical Representative in support of the motion against defendant Parsons affirming Parsons sought payment by billing plaintiff for services rendered to the passengers in the insured vehicle. Plaintiff denied Parsons' claim, as it did other claims from the provider defendants, for fraud and/or, for failure to establish unintentional contact with another vehicle or involvement in an actual accident.

* Two of the defendants herein were implicated in the federal fraud case and/or arrested: Ave K Medical P.C. and Asnondin, PT.

** According to the complaint at paragraph 49, co-defendant Robertson Valle appeared for his EUO which was not provided to the Court as part of plaintiff's application.

The Court determines that plaintiff has failed to establish by sufficient admissible evidence its *prima facie* entitlement to summary judgment against these three defendants based on its founded belief that the injury alleged was not the result of an insured accident occurring on October 28, 2007 even if these three defendants were or were not aware of any criminal scheme or fraud. (see *Central General Hospital v. Chubb Group*, 90 NY2d 195).

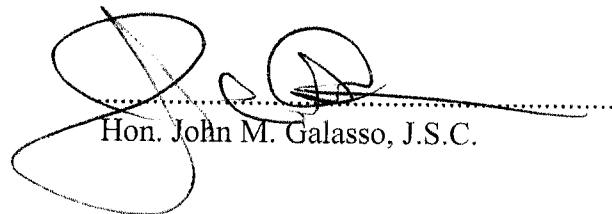
Treatment at the Ave K Medical facility, standing alone, is not evidence an accident was staged. Neither is the fact the defendant passengers may have been treated by Asnodin Dianalan, a physical therapist at the clinic.

Aside from the multiple default judgments against most of the provider defendants, there has been no preliminary conference and disclosure, involving the remaining defendants.

Since plaintiff has failed in its burden of proof in the first instance in this premature application, the Court need not examine the opposition papers (see generally *Qu v. Doshna*, 12 AD3d 578).

Plaintiff is directed to schedule a preliminary conference forthwith.

January 13, 2011



Hon. John M. Galasso, J.S.C.

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JAN 19 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE