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SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 15**

**Present: HON. WILLIAM R. LaMARCA
Justice**

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

**Motion Sequence #01
Submitted August 6, 2009**

Plaintiffs,

-against-

INDEX NO: 18368/08

**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 MYERS, VLADYMYR
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, 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
PSYCHOLOGICAL, P.C., CB CHIROPRACTIC LIMITED
LIABILITY COMPANY, DOCTOR RICHARD MEDICAL P.C.,
METROSTAR INC., MERIDAN MEDICAL OF NY, P.C.,
MERIDAN MEDICAL, P.C., NATURE ACUPUNCTURE, P.C.,
CITY CHIROPRACTIC, P.C., HK PSYCHOLOGICAL, 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., CANNON 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 ASSIT MEDICAL P.C., KAMARA SUPPLIES,
BOULEVARD SURGICAL CENTER, YIM JOON, I.V.
MEDICAL SUPPLY INC.,**

(Provider Defendants”),

Collectively, Defendants.

The following papers were read on this motion:

**Notice of Motion/Order to Show Cause.....1
NAPOLEON Affirmation in Opposition.....2
Reply Affirmation.....3**

Motion by plaintiff, PROGRESSIVE PREFERRED INSURANCE CO. and PROGRESSIVE DIRECT INSURANCE CO. (hereinafter referred to as “PROGRESSIVE”), for an order pursuant to CPLR §2201 and §6301, staying an action pending in the Supreme Court, County of Queens, entitled *Frantz G. Napoleon v Lionel Marius*, Index No. 6632/2008, is denied.

In this action for declaratory relief, PROGRESSIVE seeks a declaration that it has no contractual duty to defend or to provide indemnity coverage for the operators/passengers in the subject insured vehicles. It is alleged in the complaint that the individual defendants, including defendant, LIONEL MARIUS, are part of an enterprise to stage accidents and file fraudulent claims.

There is no dispute that defendant, FRANTZ NAPOLEON, is not an insured of the plaintiff herein or that, in the action for which a stay is sought, he is seeking damages caused by the alleged negligence of defendant, LIONEL MARIUS, in the operation of his motor vehicle which is insured by PROGRESSIVE. Plaintiff has not demonstrated that it

would be a hardship to litigate the issue of coverage on the accident involving FRANTZ NAPOLEON in a proceeding to stay an uninsured motorist claim which was commenced by his own carrier, GEICO, and which is presently scheduled for a framed issued hearing in Queens County before Justice Rios. There is no showing that FRANTZ NAPOLEON was a party to the fraud and his action in Queens County should not be prejudiced by the instant litigation. It is therefore

ORDERED, that plaintiffs' motion for a stay of the Queens County proceeding is denied; and it is further


ORDERED, that the interim stay issued in the initiating order to show cause, dated June 18, 2009, is hereby vacated; and it is further

ORDERED, that the parties shall appear for a Preliminary Conference on January 20, 2010, at 9:30 A.M. in Differentiated Case Management Part (DCM) at 100 Supreme Court Drive, Mineola, New York, to schedule all discovery proceedings. A copy of this order shall be served on all parties and on DCM Case Coordinator Richard Kotowski. **There will be no adjournments**, except by formal application pursuant to 22 NYCRR §125.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: November 20, 2009


WILLIAM R. LaMARCA, J.S.C.

ENTERED
NOV 30 2009
NASSAU COUNTY
COUNTY CLERK'S OFFICE

TO: John E. McCormack, PC
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