

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU

Present: **HON. RANDY SUE MARBER**

**JUSTICE**

TRIAL/IAS PART 14

X

PROGRESSIVE ADVANCED INSURANCE  
COMPANY,

Plaintiff,

Index No.: 011927/11

Motion Sequence...01

-against-

Motion Date...02/17/12

ALFREDO LAMBERT, KYLE JETTER,  
DANIEL STEPNEY, JESSE RODRIGUEZ,  
JOSE RIVERA, NEREIA RIVERA,  
BX2 ACUPUNCTURE P.C., BMB MEDICAL P.C.,  
EMV MEDICAL P.C., DOWNTOWN BRONX  
MEDICAL ASSOCIATES, P.C., EASTCHESTER  
PRECISION MEDICAL P.C., EQUAL PT P.C.,  
EXCELLENT MEDICAL CARE SOLUTION P.C.,  
HEALTH PLUS CHIROPRACTIC, PLLC,  
LINCOLN HOSPITAL, MAGNOLIA MEDICAL  
CARE, P.C., a/k/a MAGNOLIA MEDICAL  
MANAGEMENT CORP., MRJA RADIOLOGY, P.C.,  
NEW HEIGHTS MEDICAL DIAGNOSTICS, P.C,  
PAN BX4 ACUPUNCTURE P.C., SA MEDICAL, P.C.,  
SIRISHA PHARMACY, INC., THERACARE  
PHYSICAL THERAPY, P.C. and WIOLLA MEDICAL  
SUPPLY, INC.,

Defendants.

X

Papers Submitted:

Notice of Motion.....x

Upon the foregoing papers, the Plaintiff's unopposed motion seeking an order pursuant to CPLR § 3215, granting a default judgment in favor of the Plaintiff and against the Defendants, ALFREDO LAMBERT ("LAMBERT"), KYLE JETTER ("JETTER"), DANIEL STEPNEY ("STEPNEY"), JESSE RODRIGUEZ ("RODRIGUEZ") (hereinafter "Individual Defendants"), BMB MEDICAL P.C., EMV MEDICAL P.C., DOWNTOWN BRONX MEDICAL ASSOCIATES, P.C., EASTCHESTER PRECISION MEDICAL P.C., EQUAL PT P.C., HEALTH PLUS CHIROPRACTIC, PLLC, LINCOLN HOSPITAL, MAGNOLIA MEDICAL CARE, P.C., a/k/a MAGNOLIA MEDICAL MANAGEMENT CORP., MRJA RADIOLOGY, P.C., NEW HEIGHTS MEDICAL DIAGNOSTICS, P.C., PAN BX4 ACUPUNCTURE P.C., SIRISHA PHARMACY, INC. and THERACARE PHYSICAL THERAPY, P.C. (hereinafter "Medical Provider Defendants" or collectively referred to as the "Defaulting Defendants"), is decided as hereinafter provided.

It is alleged by the Plaintiff in its complaint that it issued a motor vehicle insurance policy under Policy No: 46425613-0 (hereinafter "Policy") to the Defendant, LAMBERT, for a 2000 Dodge Caravan (hereinafter "Vehicle") with coverage beginning on January 12, 2011. (*See* Auto Insurance Coverage Summary, dated January 15, 2011, attached to the Plaintiff's Notice of Motion as Exhibit "B") The Plaintiff alleges that Defendants, LAMBERT, JETTER, STEPNEY, RODRIGUEZ, JOSE RIVERA and NERIA RIVERA intentionally "staged" a motor vehicle accident on January 22, 2011,

ten (10) days after the policy's inception causing a "sham loss". (*See* Verified Complaint at ¶¶ 3 and 6, dated August 15, 2011, attached to the Plaintiff's Notice of Motion as Exhibit "A"; Police Accident Report, dated January 22, 2011, attached to the Plaintiff's Notice of Motion as Exhibit "D")

The Plaintiff also alleges that the Individual Defendants received services and assigned no-fault benefits to the Medical Provider Defendants.

The Plaintiff commenced this action on August 15, 2011, seeking a declaration that the Plaintiff is not obligated to defend, provide any coverage or provide no-fault reimbursements with respect to claims by the Defaulting Defendants in connection with the "staged accident" occurring on January 22, 2011. The Plaintiff also seeks an inquest on damages as to the Defaulting Defendants.

Submitted in support of the Plaintiff's motion is the sworn affidavit of Gary Lamay, a Senior Medical Representative of the Plaintiff. Mr. Lamay states in his affidavit that he is responsible for the daily maintenance of the file regarding the Defaulting Defendants herein, and as such, possesses personal knowledge of the facts supporting the Plaintiff's claims. According to Mr. Lamay's affidavit, LAMBERT took out the Policy in someone else's name, using a fictitious bank account. (*See* Affidavit in Support at ¶5, sworn to on November 17, 2011, attached to the Plaintiff's Notice of Motion; *See also* Documentation of the Bad Account, dated January 19, 2011, attached to the Plaintiff's Notice of Motion as Exhibit "C") During an Examination Under Oath,

LAMBERT stated that he did not know the address or phone number of the individual that took out the Policy nor can that individual be located. (*See* Affidavit in Support at ¶5; *See also* Lambert Examination Under Oath at pgs. 29-33, dated April 5, 2011, attached to the Plaintiff's Notice of Motion as Exhibit "E") Mr. Lamay stated that the Individual Defendants participated in a "sham loss" on January 22, 2011, before the Plaintiff could cancel the Policy for non-payment. Mr. Lamay further stated that the Individual Defendants claimed to receive services from, and assigned no-fault benefits to, the Medical Provider Defendants.

The Plaintiff submitted proof of proper service of the Summons and Complaint for all of the Defaulting Defendants except THERACARE PHYSICAL THERAPY P.C. (*See* Affidavits of Service, attached to the Plaintiff's Notice of Motion, collectively as Exhibit "F") Pursuant to CPLR § 3215 (g) (4) (i) and Business Corporation Law § 306 (b), proof of additional service of the summons upon a corporate defendant is required where service was effectuated via the Secretary of State. In this case, the Plaintiff failed to submit an Affidavit of Additional Mailing for THERACARE PHYSICAL THERAPY, P.C. Therefore, service upon THERACARE PHYSICAL THERAPY, P.C. was not duly effectuated.

The Court finds the Plaintiff's proof sufficient to demonstrate that all of the Medical Provider Defendants, with the exception of THERACARE PHYSICAL THERAPY P.C., have been duly served.

The Plaintiff submitted a stipulation of discontinuance against the Defendants, JOSE RIVERA and NEREIA RIVERA. (*See* Stipulation of Discontinuance, dated November 16, 2011, attached to the Plaintiff's Notice of Motion as Exhibit "H") The stipulation is signed by all parties who have appeared in the action. Accordingly, pursuant to CPLR § 3217 (a) (2), the Plaintiff may discontinue its claims as against JOSE RIVERA and NEREIA RIVERA without an order as they have not appeared in the action.

The Defendants BX2 ACUPUNCTURE P.C., EXCELLENT MEDICAL CARE SOLUTION P.C., SA MEDICAL, P.C., WIOLLA MEDICAL SUPPLY, INC. have answered in this action.

The remaining Defaulting Defendants, LAMBERT, JETTER, STEPNEY, RODRIGUEZ, BMB MEDICAL P.C., EMV MEDICAL P.C., DOWNTOWN BRONX MEDICAL ASSOCIATES, P.C., EASTCHESTER PRECISION MEDICAL P.C., EQUAL PT P.C., HEALTH PLUS CHIROPRACTIC, PLLC, LINCOLN HOSPITAL, MAGNOLIA MEDICAL CARE, P.C., a/k/a MAGNOLIA MEDICAL MANAGEMENT CORP., MRJA RADIOLOGY, P.C., NEW HEIGHTS MEDICAL DIAGNOSTICS, P.C, PAN BX4 ACUPUNCTURE P.C., SIRISHA PHARMACY, INC., and THERACARE PHYSICAL THERAPY, P.C. have not answered or otherwise appeared in this action.

Accordingly, it is hereby

**ORDERED**, that the Plaintiff's motion for an order awarding it a default judgment, pursuant to CPLR § 3215, against THERACARE PHYSICAL THERAPY, P.C. is **DENIED**, with leave to renew pursuant to CPLR § 2221 upon the presentment of an Affidavit of Additional Mailing; and it is further

**ORDERED**, that the Plaintiff's motion for an order awarding it a default judgment, pursuant to CPLR § 3215, against LAMBERT, JETTER, STEPNEY, RODRIGUEZ, BMB MEDICAL P.C., EMV MEDICAL P.C., DOWNTOWN BRONX MEDICAL ASSOCIATES, P.C., EASTCHESTER PRECISION MEDICAL P.C., EQUAL PT P.C., HEALTH PLUS CHIROPRACTIC, PLLC, LINCOLN HOSPITAL, MAGNOLIA MEDICAL CARE, P.C., a/k/a MAGNOLIA MEDICAL MANAGEMENT CORP., MRJA RADIOLOGY, P.C., NEW HEIGHTS MEDICAL DIAGNOSTICS, P.C, PAN BX4 ACUPUNCTURE P.C., SIRISHA PHARMACY, INC., is **GRANTED**; and it is further


**ORDERED**, that the issue of damages shall be addressed at the time of trial against the remaining Defendants; and it is further

**ORDERED**, that Plaintiff's counsel shall serve a copy of this Order upon the Defaulting Defendants, LAMBERT, JETTER, STEPNEY, RODRIGUEZ, BMB MEDICAL P.C., EMV MEDICAL P.C., DOWNTOWN BRONX MEDICAL ASSOCIATES, P.C., EASTCHESTER PRECISION MEDICAL P.C., EQUAL PT P.C., HEALTH PLUS CHIROPRACTIC, PLLC, LINCOLN HOSPITAL, MAGNOLIA

MEDICAL CARE, P.C., a/k/a MAGNOLIA MEDICAL MANAGEMENT CORP., MRJA RADIOLOGY, P.C., NEW HEIGHTS MEDICAL DIAGNOSTICS, P.C, PAN BX4 ACUPUNCTURE P.C., SIRISHA PHARMACY, INC. and THERACARE PHYSICAL THERAPY, and all appearing parties, by certified mail, return receipt requested, and by regular mail with proof of mailing within twenty (20) days of the date of this Order. **PROOF OF SERVICE MUST BE FILED WITH THE COURT**; and it is further

**ORDERED**, that the appearing parties are directed to appear for a Preliminary Conference (*See* 22 NYCRR § 202.12) at the Preliminary Conference Part, located on the lower level of the Nassau County Supreme Court on **May 2, 2012, at 9:30 a.m.** This directive, with respect to the date of the Conference, is subject to the right of the Clerk to fix an alternate date should scheduling require.

DATED: Mineola, New York  
April 9, 2012

  
\_\_\_\_\_  
Hon. Randy Sue Marber, J.S.C.

**ENTERED**  
APR 11 2012  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE