

SHORT FORM ORDER

SUPREME COURT-NEW YORK STATE-NASSAU COUNTY

PRESENT:

HON. ANTHONY L. PARGA

JUSTICE

-----X PART 8

AMERICAN COMMERCE INSURANCE COMPANY,

Plaintiff,

INDEX NO. 4213/11

-against-

MOTION DATE: 9/15/11

SEQUENCE NO. 002

Individual Claimant Defendants.

MARCELO MARTINEZ, LUIS GARCIA, VANESSA RIOS, BARBARA LICEA, MARISOL ALCAIDE, JOSE LOPEZ, JUAN ROSARIO, ANNIE TEJADA and CHRISTINE RAMOS,

Healthcare Provider Defendants.

DARLINGTON MEDICAL DIAGNOSTIC, P.C., GOOD NEW CHIROPRACTIC, P.C. DIAGNOSTIC PHYSICAL THERAPY, P.C. ATP PHYSICAL THERAPY, P.C. JSP ACUPUNCTURE P.C. WELLNESS PHYSICAL THERAPY P.C., PERSONAL TOUCH MEDICAL, P.C., I.D.F. MEDICAL DIAGNOSTIC, P.C., FEMA MEDICAL SUPPLY INC., IVY MED DISTRIBUTORS INC., SEARAY MEDICAL, P.C., VALLEY PSYCHOLOGICAL, P.C., COHEN & KRAMER, M.D., P.C., PRIORITY MEDICAL DIAGNOSTICS, P.C., STAND-UP MRI OF THE BRONX, P.C., BLUMENTHAL CHIROPRACTIC, P.C., SYNERGYFIRST MEDICAL, PLLC, ISURPLY, LLC, PREMIER SURGICAL SERVICES, P.C., ALL MEDICAL CARE OF BRONX, P.C. ACCURATE MEDICAL DIAGNOSTICS, P.C., and OPTIMUM MEDICAL, P.C.,

Defendants

-----X

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| Order to Show Cause, Affs & Exs..... | <u>1</u> |
| Affirmation in Opposition & Exs..... | <u>2</u> |
| Affirmation in Opposition & Exs..... | <u>3</u> |

Upon the foregoing papers, the plaintiff's motion, brought by Order to Show Cause, for an order, pursuant to CPLR §§6313 and 6301, granting plaintiff a preliminary injunction,

enjoining and staying the matters listed *infra* from proceeding pending the resolution of the instant declaratory judgment action, is granted as directed below.

The following facts are taken from pleadings and submitted papers and do not constitute findings of fact by this Court.

This is a declaratory judgment action which seeks, inter alia, a declaration that the events giving rise to the defendants' claims were the product of an intentional incident, namely a staged accident which allegedly occurred on August 22, 2009, and are therefore not covered by the American Commerce Insurance Company policy at issue. The plaintiff contends that the applicable policy of insurance and accompanying endorsements that it issued to its insured do not afford coverage to any defendants named herein for any of the events leading up to and following the alleged incident of August 22, 2009.

The loss in question occurred on August 22, 2009 when a vehicle insured by the American Commerce Insurance Company (hereinafter "ACIC") allegedly rear-ended another vehicle. The ACIC policy which covered the August 22, 2009 loss was issued on August 13, 2009. In support of plaintiff's motion for a preliminary injunction, plaintiff submits transcripts of the examinations under oath of Marisol Alcaide and Barbara Liceaof, as well as the deposition transcript of Juan Rosario, which illustrate the defendants' differing accounts of the accident in question. Plaintiff also submits the affidavit of Edward J. Kurathowski, an SIU Supervisor employed by the plaintiff, in which he attests that without a stay of the actions listed below, ACIC will be required to expend monies to defend each lawsuit that has been filed, or will be filed in the future, relating to the alleged accident of August 22, 2009. In addition, plaintiff submits the report of an engineer that it retained as part of its investigation of the subject accident. Said Collision Damage Analysis Report of Lange Technical Services, Ltd. states that the property damage to both vehicles involved in the subject accident is not consistent with the purported facts of the loss. Specifically, said report states that it was determined that the damage to both vehicles was enhanced and not associated with the incident in question. In addition, plaintiff contends that its investigation revealed that three of the defendants, Jose Lopez, Luis Garcia, and Barbara Licea, were involved in prior bodily injury claims relating to motor vehicle accidents. Plaintiff further contends that it was contacted by the Bronx District Attorney's Office on August 3, 2010 and was advised that this matter is under investigation for being part of a

staged loss ring.

Plaintiff argues that it has been served with a multitude of lawsuits that arise out of the alleged accident of August 22, 2009 and has been paying for the defense of each of the suits. Plaintiff further argues that it will be irreparably harmed by having to continue to defend and indemnify these lawsuits, despite the likelihood that it will succeed in proving that the August 22, 2009 accident was staged and, therefore, not a covered loss. Plaintiff contends that if the personal injury suits are allowed to progress, it will have to provide coverage in a matter where there is no coverage.

The plaintiff has demonstrated the elements necessary to justify a preliminary injunction, and the opponents to same have failed to raise any opposition sufficient to warrant a denial of the plaintiff's request. The elements required for a preliminary injunction are: (i) likelihood of success on the merits of the underlying claim; (ii) irreparable injury in the absence of the injunction; and (iii) a balance of the equities in the movant's favor. (*Arcimone-Makinano v. Britton Property, Inc.*, 83 A.D.3d 623, 920 N.Y.S.2d 362 (2d Dept. 2011)). The purpose of a preliminary injunction is to preserve the status quo until a decision is reached on the merits. (*Id.*). Accordingly, it is hereby ordered, that:

(1) Pursuant to CPLR §§2201 and 6301, the following actions are hereby stayed, including, but not limited to, any trials, settlement conferences, motions, or hearings, pending resolution of the within declaratory judgment action:

(a) IDF MEDICAL DIAGNOSTIC, P.C., A/A/O LUIS GARCIA-ALTURET v. AMERICAN COMMERCE INSURANCE COMPANY
(Civil Court, Bronx County, Index Number 1548/10)

(b) SYNERGY FIRST MEDICAL, P.L.L.C., A/A/O MARISOL ALCALDE v. AMERICAN COMMERCE INSURANCE COMPANY
(Civil Court, Bronx County, Index Number 19923/10)

(c) ATP PT, P.C., A/A/O BARBARA LICEA v. AMERICAN COMMERCE INSURANCE COMPANY
(Civil Court, Bronx County, Index Number 13847/10)

(d) JSP ACUPUNCTURE, P.C., A/A/O ALCALDE, MARISOL v. AMERICAN COMMERCE INSURANCE COMPANY
(Civil Court, Bronx County, Index Number 30043/10)

(e) DIAGNOSTIC PT, P.C., A/A/O GARCIA-ALTURET, LUIS v. AMERICAN COMMERCE INSURANCE COMPANY
(Civil Court, Bronx County, Index Number 49756/10)

(f) ATP PHYSICAL THERAPOY, P.C., A/A/O GARCIA-ALTURET, LUIS v. AMERICAN COMMERCE INSURANCE COMPANY
(Civil Court, Bronx County, Index Number 47463/10)

(g) GOOD NEWS CHIROPRACTIC, P.C., A/A/O GARCIA-ALTURET, LUIS v. AMERICAN COMMERCE INSURANCE COMPANY
(Civil Court, Bronx County, Index Number 49757/10)

(h) JSP ACUPUNCTURE, P.C., A/A/O GARCIA-ALTURET, LUIS v. AMERICAN COMMERCE INSURANCE COMPANY
(Civil Court, Bronx County, Index Number 47462/10)

(i) ATP PHYSICAL THERAPY, P.C., A/A/O ALCALDE, MARISOL v. AMERICAN COMMERCE INSURANCE COMPANY
(Civil Court, Bronx County, Index Number 56367/10)

(j) ISURPLY, LLC A/A/O GARCIA-ALTURET, LUIS v. COMMERCE INSURANCE COMPANY
(Civil Court, Bronx County, Index Number 30954/10)

(k) JUAN M. ROSARIO v. MARCELO MARTINEZ, VANESSA RIOS, ANNI TEJEDA and JOSE LOPEZ
(Supreme Court, Bronx County, Index Number 310053/09)

(l) JOSE LOPEZ v. VANESSA RIOS and MARCELO MARTINEZ
(Supreme Court, Bronx County, Index Number 304403/10)

(m) CHRISTINE RAMOS and ANNI E. TEJEDA v. JOSE LOPEZ, MARCELO MARTINEZ and VANESSA RIOS
(Supreme Court, Bronx County, Index Number 308015/10);

(2) Pursuant to CPLR §§2201 and 6313, any and all current, pending, and/or future no-fault actions, no-fault arbitrations, no-fault lawsuits or no-fault proceedings, involving any and all of the defendants named herein, their agents, employees, assignees and/or heirs, are hereby stayed pending the resolution of the within declaratory judgment action; and

(3) Plaintiff's obligations to honor any pending and/or future no-fault bills or to provide any coverage, reimbursements or pay any monies, sums, or funds to any of the defendants named herein for any and all no-fault related services for which claims/bills have been, or may be in the future, submitted by

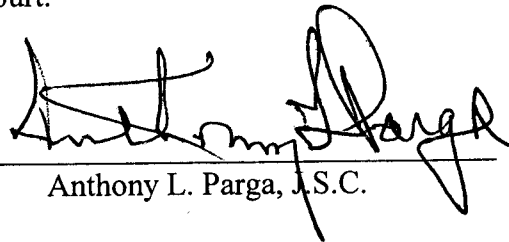
defendants to plaintiff arising from the alleged subject August 22, 2009 accident are stayed pending the resolution of the instant declaratory judgment action.

Plaintiff is hereby ordered to serve a copy of this Order upon all defendants to this action or upon their counsel, if they are represented by counsel, within fifteen (15) days. Plaintiff is further directed to serve a copy of this Order upon the Clerks of the Courts where the above-noted stayed actions are pending within fifteen (15) days.

It is further ordered that the plaintiff serve a copy of this Order upon the Differentiated Case Management Part ("DCM") Case Coordinator of the Nassau County Supreme Court within fifteen (15) days of the date of this Order. The parties shall appear for a **Preliminary Conference on December 20, 2011, at 9:30 A.M.** in the DCM Part, Nassau County Supreme Court, to schedule all discovery proceedings.

This constitutes the decision and Order of this Court.

Dated: November 4, 2011



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