

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: HON. THOMAS P. PHELAN,
Justice.

PROGRESSIVE ADVANCED INSURANCE COMPANY,

Plaintiffs,

- against-

BASCOMBE, RASHAAD; BASCOMBE, ANDREW
UZOMA, BAMIDELE; TAYLOR, ROBERT
"Individual Defendants",
ACUPUNCTURE HEALTHCARE PLAZA I, P.C.
AUSTIN DIAGNOSTIC MEDICAL, P.C.,
AVANGUARD MEDICAL GROUP PLLC
AVIR SURGICAL SUPPLY CO. INC.
BIG APPLE ORTHO MED SUPPLY, INC.
BROMER MEDICAL P.C., CHIROPRACTIC LONGEVITY P.C.
CLEARVIEW OF BROOKLYN MEDICAL P.C.
CONEY ISLAND HOSPITAL, FOREST DRUGS
HILLSIDE SURGICAL, INTEGRAL ASSIST MEDICAL P.C.
INTEGRATED MEDICAL CARE OF NY P.C.
METROPOLITAN MEDICAL & SURGICAL P.C.
MY CHOICE PHARMACY, INC.
OMEGA DIAGNOSTIC IMAGING, P.C.
PROGRESSIVE ORTHOPEDICS, PLLC
SYLVIA LOBO MD, ST. GEORGE REHAB PHYSICAL
THERAPY P.C., VNP ACUPUNCTURE P.C.
IDEAL CARE PHYSICAL THERAPY, P.C.
PORT MEDICAL P.C.
ATLANTIC RADIOLOGY IMAGING, P.C.
BAY RIDGE ORTHOPEDIC ASSOCIATES, P.C.
CHIROPRACTIC HEALTH PLUS D.S., P.C.
DIAGNOSTIC MEDICINE P.C.
FIVE BORO PSYCHOLOGICAL AND LICENSED MASTER
SOCIAL WORK SERVICES PLLC; HORIZON RADIOLOGY,
P.C., RELIEF MEDICAL P.C., SANLI ACUPUNCTURE, P.C.

"Provider Defendants"

Defendants.

TRIAL/IAS PART 2
NASSAU COUNTY

Index No. 008691/11

MOTION SEQUENCE #1
ORIGINAL RETURN DATE:
09/19/11
SUBMISSION DATE: 10/19/11

The following papers read on this motion:

Notice of Motion.....	1
Stipulation.....	2

Plaintiff moves for an order granting judgment by default, pursuant to CPLR 3215, and for an inquest on reimbursement against the following defendants:

- BASCOMBE, RASHAAD; BASCOMBE, ANDREW
- UZOMA, BAMIDELE; TAYLOR, ROBERT
- “Individual Defendants”**,
- ACUPUNCTURE HEALTHCARE PLAZA I, P.C.
- AUSTIN DIAGNOSTIC MEDICAL, P.C.,
- AVANGUARD MEDICAL GROUP PLLC
- AVIR SURGICAL SUPPLY CO. INC.
- BIG APPLE ORTHO MED SUPPLY, INC.
- BROMER MEDICAL P.C.; CHIROPRACTIC LONGEVITY P.C.
- CLEARVIEW OF BROOKLYN MEDICAL P.C.
- HILLSIDE SURGICAL; INTEGRAL ASSIST MEDICAL P.C.
- INTEGRATED MEDICAL CARE OF NY P.C.
- METROPOLITAN MEDICAL & SURGICAL P.C.
- MY CHOICE PHARMACY, INC.
- OMEGA DIAGNOSTIC IMAGING, P.C.
- PROGRESSIVE ORTHOPEDICS, PLLC
- ST. GEORGE REHAB PHYSICAL THERAPY P.C.
- VNP ACUPUNCTURE P.C.
- IDEAL CARE PHYSICAL THERAPY, P.C.
- PORT MEDICAL P.C.
- ATLANTIC RADIOLOGY IMAGING, P.C.
- BAY RIDGE ORTHOPEDIC ASSOCIATES, P.C.
- CHIROPRACTIC HEALTH PLUS D.S., P.C.
- DIAGNOSTIC MEDICINE P.C.
- FIVE BORO PSYCHOLOGICAL AND LICENSED MASTER
SOCIAL WORK SERVICES PLLC
- HORIZON RADIOLOGY, P.C.
- RELIEF MEDICAL P.C.; SANLI ACUPUNCTURE, P.C.
- “Provider Defendants”**

(the “Defaulting Defendants”). The court notes from the outset that this action is for a declaratory judgment and that no relief has been sought for reimbursement. Accordingly, that branch of plaintiffs’ motion for an inquest on reimbursement is denied. Plaintiff also seeks an order granting an extension of time to effectuate service, pursuant to CPLR 306-b, as to defendants FOREST DRUGS and SLYVIA LOBO MD.

By Stipulation dated September 21, 2011, the motion was withdrawn as to Five Boro Psychological and Licensed Master Social Work Services PLLC only.

Plaintiff brings this action seeking a declaratory judgment that plaintiff is under no obligation to reimburse the Provider Defendants, as well as the Individual Defendants, for services purportedly rendered and billed to plaintiff pursuant to the No-Fault Laws and Regulations and Insurance Law of this state based upon the Individual Defendants failure to comply with conditions precedent to coverage.

All of the Defaulting Defendants were served with the Summons and Verified Complaint. Counsel for plaintiff states that the Defaulting Defendants have failed to appear or otherwise move with respect to the complaint.

In support of plaintiff’s claim, it submits an affirmation of counsel and an affidavit of Adam Figarsky, an employee of plaintiff, as well as a copy of the verified complaint (Ex. A).

Mr. Figarsky avers that the Individual Defendants failed to appear for their EUOs and that a “no show” statement on the record was made. The EUOs were requested because plaintiff believed that the Individual Defendants were involved in a staged loss (Figarsky Aff. ¶ 2). It is alleged that by failing to appear, they failed to comply with the terms of the insurance policy precluding them from receiving no-fault benefits.

The Individual Defendants purportedly sought treatment from the Provider Defendants for injuries alleged to have been sustained as a result of an accident which occurred on September 24, 2010.

Based upon all of the foregoing, plaintiff's motion for a default judgment is granted as against all of the Defaulting Defendants, except for FIVE BORO PSYCHOLOGICAL AND LICENSED MASTER SOCIAL WORK SERVICES PLLC.

Submit judgment.

Plaintiff's unopposed motion for an order, pursuant to CPLR 306-b, extending the time in which to serve defendants, FOREST DRUGS and SLYVIA LOBO MD, is granted.

Plaintiff has adequately demonstrated its attempts at service upon defendants, FOREST DRUGS and SLYVIA LOBO MD. The court, therefore, extends plaintiff's time to serve defendants, FOREST DRUGS and SLYVIA LOBO MD, "upon good cause shown" (CPLR 306-b) for a period of one hundred twenty (120) days from the date of this order. Service may be made pursuant to CPLR 308(2) or (4). In the event plaintiff is unable to effectuate service pursuant to those methods, an order of publication may be submitted.

To insure the expeditious completion of disclosure in this action, a Preliminary Conference shall be held.

Counsel are directed to appear on January 18, 2012 at 9:30 A.M. in the Preliminary Conference area, lower level of this courthouse, to obtain and fill out a Preliminary Conference Order.

This decision constitutes the order of the court.

Dated: _____

12-21-11

HON THOMAS P. PHELAN

THOMAS P. PHELAN, J.S.C.

ENTERED
DEC 23 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE

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Attorneys/Parties of Record:

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