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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS P. PHELAN,
Justice.

TRIAL/IAS PART 2
NASSAU COUNTY

PROGRESSIVE MAX INSURANCE COMPANY,

Plaintiff,

Index No. 025130/09

-against-

KOBI OMAR PRENDERGAST, NAKIA HILAND,
WINIFRED WHITEHURST, KAMICA S. FULLER,
ANDREW GREGORY, ADVANCED
PSYCHOLOGICAL CARE, PC, BEST
ACUPUNCTURE, PC, DOCTOR OF MEDICINE
IN THE HOUSE, PC, EPOCA CHIROPRACTIC
CARE, PC, HABIBA P.T., PC, OLMEUR MEDICAL,
PC, RDB MEDICAL CARE, PC, SOCRATES
MEDICAL HEALTH, PC, VISTA MEDICAL
DIAGNOSTIC IMAGING, PC and WINDY CITY
MEDICAL SUPPLY, INC.,

ORIGINAL RETURN DATE: 12/17/10
SUBMISSION DATE: 12/17/10
MOTION SEQUENCE #2

Defendants.

The following papers read on this motion:

Notice of Motion..... 1

Plaintiff moves for an order granting judgment by default, pursuant to CPLR 3215, against defendants, KOBI OMAR PRENDERGAST, NAKIA HILAND, WINIFRED WHITEHURST, KAMICA S. FULLER, ADVANCED PSYCHOLOGICAL CARE, PC, BEST ACUPUNCTURE, PC, EPOCA CHIROPRACTIC CARE, PC, HABIBA P.T., PC, OLMEUR MEDICAL, PC, RDB MEDICAL CARE, PC, VISTA MEDICAL DIAGNOSTIC IMAGING, PC and WINDY CITY MEDICAL SUPPLY, INC. By Stipulations of Discontinuance the action has been discontinued against defendants, ANDREW GREGORY, DOCTOR OF MEDICINE IN THE HOUSE, PC and SOCRATES MEDICAL HEALTH, PC (Ex. C). Accordingly, the caption of this action is hereby amended to read as follows:

“PROGRESSIVE MAX INSURANCE COMPANY,

Plaintiff,

-against-

KOBI OMAR PRENDERGAST, NAKIA HILAND,
WINIFRED WHITEHURST, KAMICA S. FULLER,
ADVANCED PSYCHOLOGICAL CARE, PC, BEST
ACUPUNCTURE, PC, EPOCA CHIROPRACTIC
CARE, PC, HABIBA P.T., PC, OLMEUR MEDICAL,
PC, RDB MEDICAL CARE, PC, VISTA MEDICAL
DIAGNOSTIC IMAGING, PC and WINDY CITY
MEDICAL SUPPLY, INC.,

Defendants.”

Plaintiff brings this action seeking a declaratory judgment that the policy issued to Kobi Omar Prendergast was not in effect for the loss of June 29, 2009, and that plaintiff (1) has no duty to provide liability coverage to any of the individual defendants; (2) has no duty to defend or indemnify any of the individual defendants in any pending or future actions that have or may be brought as a result of the subject loss; (3) has no duty to provide coverage for claims for no-fault or uninsured motorist benefits made by or on behalf of any person or entity in connection to the subject loss; and (4) is not obligated to provide reimbursement to defendants, ADVANCED PSYCHOLOGICAL CARE, PC, BEST ACUPUNCTURE, PC, EPOCA CHIROPRACTIC CARE, PC, HABIBA P.T., PC, OLMEUR MEDICAL, PC, RDB MEDICAL CARE, PC, VISTA MEDICAL DIAGNOSTIC IMAGING, PC and WINDY CITY MEDICAL SUPPLY, INC.

Plaintiff challenges its obligation to provide coverage alleging that the underlying “incident” of June 29, 2009, was, in fact, a staged impact for which coverage is not available (*see, Allstate Ins. Co. v. Massre*, 14 AD3d 610 [2d Dept. 2005]). In support of plaintiffs’ claim, it submits an affirmation of counsel and an affidavit of Adam Figarsky, a Medical Representative employed by plaintiff, sworn to the 4th day of November, 2010, as well as a copy of the verified complaint (Ex. A).

It is alleged that a certain policy of insurance was issued to defendant, Kobi Omar Prendergast, covering his automobile, providing liability and no-fault coverage. Plaintiff alleges in its complaint that the various individual defendants purportedly sought treatment from the medical provider defendants for injuries alleged to have been sustained as a result of the accident which occurred on June 29, 2009, and assigned their rights to receive no-fault benefits to the medical provider defendants.

It is alleged that the individual defendant, Nakia Hiland, failed to appear for an Examination Under Oath. It is submitted that by failing to appear, Nakia Hiland failed to comply with the terms of the insurance policy precluding her from receiving no-fault benefits. Moreover, defendants, Kobi Omar Prendergast and Winifred Whitehurst, materially misrepresented themselves at their Examinations Under Oath. It is submitted that the testimony was completely inconsistent with respect to every aspect of the loss; and that they, therefore, failed to provide proof of claim and facts of loss.

Mr. Figarsky avers that “[n]o party to this loss has furnished any proof to demonstrate that the subject loss was in fact an **accident** as opposed to one of a series of intentional acts designed to defraud PROGRESSIVE MAX and the public” (Figarsky Aff. ¶ 25).

Plaintiff submits the affidavits of service upon defendants and submits that defendants have failed to appear, answer or otherwise move and that their time to do so has expired.

Based upon all of the foregoing, plaintiff’s motion for a default judgment is granted. Submit judgment

This decision constitutes the order of the court.

Dated: 2-14-11

HON THOMAS P. PHELAN
THOMAS P. PHELAN, J.S.C.

Attorneys/Parties of Record

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Defendant
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Malverne, New York 11565

NAKIA HILAND
Defendant
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New Rochelle, New York 10801

WINIFRED WHITEHURST
Defendant
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Bronx, New York 10469

ENTERED
FEB 16 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE

KAMICA S. FULLER

Defendant

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and

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ADVANCED PSYCHOLOGICAL CARE, PC

Defendant

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Brooklyn, New York 11234

BEST ACUPUNCTURE, PC

Defendant

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EPOCA CHIROPRACTIC CARE, PC

Defendant

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HABIBA P.T., PC

Defendant

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SH26, Apartment 2A

Brooklyn, New York 11214

OLMEUR MEDICAL PC

Defendant

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RDB MEDICAL CARE, PC

Defendant

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Bronx, New York 10462

VISTA MEDICAL DIAGNOSTIC IMAGING, PC

Defendant

c/o Neil L. Fuhrer & Assoc. LLP

750 Third Avenue, 29th Floor

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WINDY CITY MEDICAL SUPPLY, INC.

Defendant

41 Dumont Avenue

Staten Island, New York 10304