

**SHORT FORM ORDER**

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER  
Acting Supreme Court Justice

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NATIONAL CONTINENTAL INSURANCE COMPANY,

Plaintiff,

- against -

RICHARD HENRY, EARL JOSEPH, PATRICK MORRIS,  
SHORN THOMPSON, LLOYD KEMP, KERVINS  
ST. JEAN, SHAWNELLE OTTLEY, SALIM ANTOINE,  
CHRISTOPHER TARRY, PANCITO D. ELLIS,  
ROBINSON V. ELLIS, KEVIN LIBERT, RACHUEL  
LIBERT, KIMBERLY LIBERT, KELLYANN LIBERT,  
SHAWN QUAMINA ("Individual Defendants"),

-and-

ARNICA ACUPUNCTURE, P.C., B.C. CHIROPRACTIC,  
P.C., BARON LEA, INC., BIG APPLE CHIROPRACTIC,  
P.C., BEST HEALTH ACUPUNCTURE, P.C, BETH  
ISRAEL MEDICAL CENTER, BONNE SANTO, INC.,  
BORIS GILZON, PT, CHT, BROMER MEDICAL, P.C.,  
BROOKDALE ER PHYS DEPT., BROOKDALE  
HOSPITAL, BQE ACUPUNCTURE, P.C., CANARSIE  
MEDICAL HEALTH, P.C., CLEARVIEW OF BROOKLYN  
MEDICAL, P.C., CORNELIA PAIN MANAGEMENT,  
COVE CHIROPRACTIC, P.C., DOSHI DIAGNOSTIC  
IMAGING SERVICES, P.C., DUMONT MEDICAL  
DIAGNOSTICS, P.C., FDNY EMS, GBI ACUPUNCTURE,  
P.C., GIANNA MEDICAL, P.C., GORDON C. DAVIS,  
MEDICAL, P.C., GREAT HEALTH CARE CHIROPRACTIC,  
P.C., HARVARD MEDICAL, P.C., KARINA K.  
ACUPUNCTURE, P.C., KDM CHIROPRACTIC &  
DIAGNOSTIC, P.C., KINGS COUNTY HOSPITAL CENTER,  
LENCO DIAGNOSTIC LABORATORIES, INC., L.N.L.

TRIAL/IAS PART 32  
NASSAU COUNTY

Index No.: 2513/11  
Motion Seq. No.: 01  
Motion Date: 07/13/11

REHABILITATION PHYSICAL THERAPY, P.C., M & M MEDICAL, P.C., MEDISYS AMBULANCE SERVICE, INC., MOBILITY EXPERTS MEDICAL, P.C., NEW CAPITAL SUPPLY, INC., NEW WAVE CHIROPRACTIC, P.C., NEW WAY MASSAGE THERAPY, P.C., NORTH STAR MEDICAL, P.C., OMEGA DIAGNOSTIC IMAGING, P.C., POWER SUPPLY, INC., PROGRESSIVE ORTHOPEDICS, PLLC, SANLI ACUPUNCTURE, P.C., SEACOAST MEDICAL, P.C., SK PRIME MEDICAL SUPPLY, INC., SKILLMAN MEDICAL DIAGNOSTICS, P.C., SMQ MEDICAL, P.C., SP CHIROPRACTIC. P.C., SPEEDY WAY PT, P.C., STAND UP MRI OF BROOKLYN, P.C., SUNRISE ACUPUNCTURE, P.C., THERAPEUTIC SOLUTIONS MASSAGE THERAPY, P.C., TOTAL BODY DIAGNOSTICS, P.C., ULTIMATE HEALTH PRODUCTS, INC., UNIVERSAL REHAB PT, P.C., WOODHULL MEDICAL CARE, P.C. and YORK ANESTHESIOLOGISTS, PLLC (“Provider Defendants”),

Defendants.

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**The following papers have been read on this motion:**

	Papers Numbered
<u>Notice of Motion, Affirmation, Affidavit and Exhibits</u>	<u>1</u>
<u>Affirmation in Opposition by Defendant Lloyd Kemp and Exhibit</u>	<u>2</u>

Upon the foregoing papers, it is ordered that the motion is decided as follows:

Plaintiff’s motion, pursuant to CPLR §3215, for entry of a default judgment against defendants SHORN THOMPSON, KERVINS ST. JEAN, SALIM ANTOINE, CHRISTOPHER TARRY, PANCITO D. ELLIS, ROBINSON V. ELLIS, RACHUEL LIBERT, KIMBERLY LIBERT, KELLYANN LIBERT, SHAWN QUAMINA, ARNICA ACUPUNCTURE, P.C., B.C. CHIROPRACTIC, P.C., BARON LEA, INC., BEST HEALTH ACUPUNCTURE, P.C., BETH ISRAEL MEDICAL CENTER, BONNE SANTO, INC., BORIS GILZON, PT, CHT, BROMER MEDICAL, P.C., BQE ACUPUNCTURE, P.C., CANARSIE MEDICAL HEALTH,

P.C., COVE CHIROPRACTIC, P.C., GIANNA MEDICAL, P.C., GORDON C. DAVIS, MEDICAL, P.C., HARVARD MEDICAL, P.C., KARINA K. ACUPUNCTURE, P.C., KDM CHIROPRACTIC & DIAGNOSTIC, P.C., Lenco DIAGNOSTIC LABORATORIES, INC., L.N.L. REHABILITATION PHYSICAL THERAPY, P.C., M & M MEDICAL, P.C., MEDISYS AMBULANCE SERVICE, INC., MOBILITY EXPERTS MEDICAL, P.C., NEW CAPITAL SUPPLY, INC., NEW WAVE CHIROPRACTIC, P.C., NEW WAY MASSAGE THERAPY, P.C., NORTH STAR MEDICAL, P.C., OMEGA DIAGNOSTIC IMAGING, P.C., POWER SUPPLY, INC., PROGRESSIVE ORTHOPEDICS, PLLC, SANLI ACUPUNCTURE, P.C., SEACOAST MEDICAL, P.C., SMQ MEDICAL, P.C., SP CHIROPRACTIC. P.C., SPEEDY WAY PT, P.C., STAND UP MRI OF BROOKLYN, P.C., SUNRISE ACUPUNCTURE, P.C., THERAPEUTIC SOLUTIONS MASSAGE THERAPY, P.C., ULTIMATE HEALTH PRODUCTS, INC., UNIVERSAL REHAB PT, P.C., WOODHULL MEDICAL CARE, P.C. and YORK ANESTHESIOLOGISTS, PLLC is hereby **GRANTED**.

The Court notes that no opposition to said application was made by any of the aforementioned defendants.

Plaintiff proves jurisdiction by annexing copies of the affidavits of service of the Summons and Verified Complaint upon the aforementioned defendants and proves their default in the affirmation of counsel. Plaintiff proves its claims in the affidavit of Gary Lamay, Senior Medical Representative employed by plaintiff, and the supporting exhibits. *See* CPLR §3215(f); *Joosten v. Gale*, 129 A.D.2d 531, 514 N.Y.S.2d 729 (1<sup>st</sup> Dept. 1987).

An Inquest on reimbursement as to the aforementioned defaulting defendants is respectfully referred to the trial of the underlying action.

Plaintiff moves, pursuant to CPLR §§ 306-b and 308(5), for an extension of time to effectuate service and for substituted service upon defendants LLOYD KEMP (“KEMP”) and TOTAL BODY DIAGNOSTICS, P.C.

Defendant KEMP’s counsel opposes the motion, stating, “[o]n July 5, 2011, our office interposed an answer on behalf of defendant, LLOYD KEMP....In light of the facts and evidence presented, and since the plaintiff did not suffer any prejudice, the Motion against LLOYD KEMP must be denied as moot.

The Court finds that plaintiff’s application, pursuant to CPLR §§ 306-b and 308(5), for an extension of time to effectuate service and for substituted service upon defendant TOTAL BODY DIAGNOSTICS, P.C. is hereby **GRANTED**. The Court hereby orders that plaintiff may serve the Summons and Verified Complaint upon defendant TOTAL BODY DIAGNOSTICS, P.C. by publication pursuant to CPLR § 316. It is hereby directed that the Summons be published together with the notice to defendant TOTAL BODY DIAGNOSTICS, P.C., a brief statement of the nature of the action and the relief sought and the sum of money for which judgment may be taken in case of default. The publication shall be in both the BROOKLYN SPECTATOR and the NEW YORK POST, once per week, for four successive weeks. The first publication of the Summons shall be made within thirty (30) days of this Order.

Plaintiff’s application, pursuant to CPLR §§ 306-b and 308(5), for an extension of time to effectuate service and for substituted service upon defendant LLOYD KEMP is hereby **DENIED as moot**.

Defendants CLEARVIEW OF BROOKLYN MEDICAL, P.C., DOSHI DIAGNOSTIC IMAGING SERVICES, P.C. and DUMONT MEDICAL DIAGNOSTICS, P.C. have waived all of their claims in this action and, as such, have been discontinued from said action. Defendants

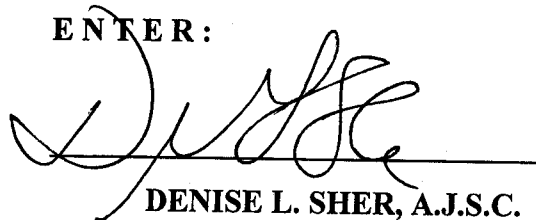
BROOKDALE ER PHYS DEPT., BROOKDALE HOSPITAL, EARL JOSEPH, KEVIN LIBERT, PATRICK MORRIS, RICHARD HENRY and SHAWNELLE OTTLEY have been discontinued without prejudice from this action.

Plaintiff has withdrawn the instant motion and stipulated to a discontinuance with defendants BIG APPLE CHIROPRACTIC, P.C., CORNELIA PAIN MANAGEMENT, FDNY EMS, KINGS COUNTY HOSPITAL CENTER, SK PRIME MEDICAL SUPPLY, INC. and SKILLMAN MEDICAL DIAGNOSTICS, P.C.

It is further ordered that plaintiff and the non-defaulting defendants, LLOYD KEMP, GBI ACUPUNCTURE, P.C. and GREAT HEALTH CARE CHIROPRACTIC, P.C., shall appear for a Preliminary Conference on November 14, 2011, at 9:30 a.m., at the Preliminary Conference Desk in the lower level of 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. There will be no adjournments, except by formal application pursuant to 22 NYCRR § 125.

This constitutes the Decision and Order of this Court.

ENTER:



DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York  
August 16, 2011

**ENTERED**  
AUG 18 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE