

**SHORT FORM ORDER**

SUPREME COURT OF THE STATE OF NEW YORK

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

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UTICA MUTUAL INSURANCE COMPANY,

Plaintiff,

- against -

TRIAL/IAS PART 32  
NASSAU COUNTY

Index No.: 3391/11  
Motion Seq. No.: 02  
Motion Date: 08/18/11

MAGNEDALLA PIERRE, OSVAL GUILLAUME,  
LILIAN MEDINA, STEVE A. MEDINA, QUEENS  
INTEGRATED MEDICAL CARE, P.C.,  
RGA CHIROPRACTIC P.C., CMS MEDICAL SUPPLY  
INC., A.H. PHYSICAL THERAPY, P.C., CAREGIVER  
CHIROPRACTIC, P.C., ZSA MEDICAL CARE, P.C.,  
PROVVEDERE, INC., EAST TREMONT MEDICAL  
CENTER, STUART REMER, M.D., JOSEPH PRAINO,  
EZEKIEL AKANDE, M.D., THERESA MICHELLE,  
CNRA, MODERN CHIROPRACTIC P.C., OPTIMUM  
MEDICAL, P.C., OLGA BARD ACUPUNCTURE, P.C.  
and PREMIER PHYSICAL MEDICINE &  
REHABILITATION, P.C.,

Defendants.

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

	<u>Papers Numbered</u>
<u>Notice of Motion, Affirmation and Exhibits</u>	<u>1</u>

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

Plaintiff moves, pursuant to CPLR § 1003, for an order adding the following persons and corporation as party defendants in the above entitled action: Orthotech Express Corp.,

Brownsville Advance Medical, P.C., David Vilabrera, M.D, Valley Stream Radiology, P.C., M. Saddes, MD, PC, All Boro Psychological Services, PC, True Point Acupuncture, PC, BSZ Chiropractic, PC, Hillside Surgicare, Tong Li, MD, Jeffrey Menegas, MD, Progressive Orthopedics, MG Acupuncture, PC and V&T Medical, PC.; and moves, upon the granting of the above requested joinder of party defendants, for an order granting plaintiff leave to amend its Complaint accordingly and to serve its Proposed Supplemental Summons and Amended Complaint upon Orthotech Express Corp., Brownsville Advance Medical, P.C., David Vilabrera, M.D, Valley Stream Radiology, P.C., M. Saddes, MD, PC, All Boro Psychological Services, PC, True Point Acupuncture, PC, BSZ Chiropractic, PC, Hillside Surgicare, Tong Li, MD, Jeffrey Menegas, MD, Progressive Orthopedics, MG Acupuncture, PC and V&T Medical, PC.

This is a declaratory judgment action commenced by plaintiff against various defendants who have instituted, or who may institute claims against the plaintiff or its insureds, wherein plaintiff is seeking a judicial determination that is not obligated to pay any sums, monies, claims, damages, awards and/or benefits to any of the defendants named herein, many of whom have commenced actions seeking to recover first party no-fault benefits as assignees of defendants Magedalla Pierre and Osva Guillaume who were reportedly occupying a motor vehicle insured by the plaintiff which was allegedly involved in an incident occurring on January 29, 2010.

Subsequent to the commencement of the instant action, plaintiff advised its counsel that claims for first party no-fault benefits had been received from parties/entities not named as defendants in this action and that certain of same had commenced proceedings to recover on those claims. Subsequent to the commencement of the above entitled action and after service of the original Summons and Complaint herein, plaintiff became aware of the fact that Orthotech

Express Corp., Brownsville Advance Medical, P.C., David Vilabrera, M.D, Valley Stream Radiology, P.C., M. Saddes, MD, PC, All Boro Psychological Services, PC, True Point Acupuncture, PC, BSZ Chiropractic, PC, Hillside Surgicare, Tong Li, MD, Jeffrey Menegas, MD, Progressive Orthopedics, MG Acupuncture, PC and V&T Medical, PC have either instituted or may institute claims against plaintiff or its insureds. Said individuals/entities were not named as defendants in the instant action in the original Summons and Complaint.

Plaintiff submits that “[j]oinder of the additional parties is desirable so that parties who have or may have claims against Utica Mutual Insurance Company arising out of the incident giving rise to this action may be joined in one action and Utica Mutual Insurance Company’s claims against the defendants can be determined in one action....The joinder of Orthotech Express Corp., Brownsville Advance Medical, P.C., David Vilabrera, M.D, Valley Stream Radiology, P.C., M. Saddes, MD, PC, All Boro Psychological Services, PC, True Point Acupuncture, PC, BSZ Chiropractic, PC, Hillside Surgicare, Tong Li, MD, Jeffrey Menegas, MD, Progressive Orthopedics, MG Acupuncture, PC and V&T Medical, PC. will not prejudice a substantial right of any of the defendants in plaintiff’s original Summons and Complaint as the claims arise out of the same alleged accident of January 9, 2010. Moreover, to date no answer has been received by any of the defendants named in the original Summons and Complaint. Common questions of law and fact are involved and the joinder of these parties into the same action will save time and costs to the Court, its personnel, the parties and their respective attorneys, and witnesses.”

Generally, leave to amend a pleading should be freely granted. *See* CPLR § 3025(b). The party seeking such amendment must demonstrate a proper basis for same. *See Wieder v. Scala,*

168 A.D.2d 355, 563 N.Y.S.2d 76 (1<sup>st</sup> Dept. 1990). Such an application must be supported by an affidavit that the proposed amendment is meritorious. *See Zaid Theatre Corp. v. Suna Realty Co.*, 18 A.D.3d 352, 797 N.Y.S.2d 434 (1<sup>st</sup> Dept. 2005). A motion for leave to serve an amended pleading will only be denied where the amendment is wholly devoid of merit or is significantly prejudicial to the non-moving party. *See Norman v. Ferrara*, 107 A.D.2d 739, 484 N.Y.S.2d 600 (2d Dept.1985). The merits of the proposed amended pleading will not be reviewed "... unless the insufficiency or lack of merit is clear and free from doubt." *Id.* at 740, 741. Mere lateness is not a barrier to the amendment. In the absence of significant prejudice the court will not deny a delayed application for leave to amend a pleading. Lateness combined with significant prejudice to the non-moving parties is required in order to defeat the motion. *See Edenwald Contracting Co., Inc. v. City of New York*, 60 N.Y.2d 957, 471 N.Y.S.2d 55 (1983).

As previously noted, no opposition was submitted to the instant motion.

Based upon the facts and the legal argument before the Court, plaintiff's motion is hereby **GRANTED in its entirety.**

This constitutes the Decision and Order of this Court.

**ENTER:**



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

Dated: Mineola, New York  
September 27, 2011

**ENTERED**  
**SEP 30 2011**  
**NASSAU COUNTY**  
**COUNTY CLERK'S OFFICE**