

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS A. ADAMS,  
Acting Supreme Court Justice

TRIAL/IAS, PART 33  
NASSAU COUNTY

PROGRESSIVE PREFERRED INSURANCE COMPANY,

Plaintiff(s), MOTION DATE: 12/06/10  
-against- INDEX NO.: 9977/09  
SEQ. NO. 2

CLAUDIO MEDINA, JR., ANGELIQUE WITTS, ANTONIO  
TUTT, GARRICK AUSTIN, ERICK LaJOIE, CARMELIA  
YANCY SMITH, ALEXANDER SHEALEY a/k/a SHEALY  
ALEXANDER a/k/a ALEX FOSTER, SARAH MARTIN,  
STACEY MARTIN, MICHELLE BOLTON, DAVID HACKSHAW,  
JR., MICHAEL LEE EDWARDS a/k/a LEE EDWARDS  
MICHAEL, CECILIA FORD, ILEANA G. WAAL, a/k/a  
ILENA WAAL, CORI PARHAM, TRISHA DUNCAN,  
MOHAMMAD ZAMAN, SHATARA COOK and MONARAY JONES,

Individual Defendant(s),

and

A.H. PHYSICAL THERAPY, P.C., ALL BORO PSYCHOLOGICAL  
SERVICES, P.C., ALROF INC., AMERICHOICE MEDICAL,  
P.C., AUSTIN DIAGNOSTIC MEDICAL, P.C., BEAL-  
MEDEA PRODUCTS, INC., BENEFICIAL ACUPUNCTURE, P.C.,  
CAREGIVER CHIROPRACTIC, P.C., CITY DENTAL SERVICES,  
P.C., CLASSIC PHYSICAL THERAPY AND REHAB, P.C.,  
DEDICATED CHIROPRACTIC, P.C., ELMHURST UNITED  
MEDICAL, P.C., ELMONT ACUPUNCTURE, P.C., ESSENTIAL  
RADIOLOGY, P.C., ETERNITY CHIROPRACTIC, P.C., G.I.  
CHIROPRACTIC, P.C., GZ MEDICAL AND DIAGNOSTIC, P.C.,  
HOPE REHAB P.T., P.C., INNOVATIVE MEDICAL, P.C.,  
JAMAICA TOTAL CHIROPRACTIC, P.C., MED EQUIPMENTS  
SERVICE, INC., NATIONAL MEDICAL & SURGICAL SUPPLY,  
INC., NORTHSTAR MEDICAL, PLLC, ONE OF THE BEST, INC.,  
PERSONAL TOUCH MEDICAL, P.C., PMR MEDICAL & DIAGNOSTIC,  
P.C., POMONA MEDICAL DIAGNOSTICS, P.C., QUALITY  
PSYCHOLOGICAL SERVICES, P.C., RICHMOND RADIOLOGY, P.C.,  
RIGHT AID DIAGNOSTIC MEDICINE, P.C., ROYAL ACUPUNCTURE

P.C., SANLI ACUPUNCTURE, P.C., SEARAY MEDICAL,  
P.C., SKY MEDICAL, P.C., SOFT TOUCH ACUPUNCTURE,  
STAR MEDICAL & DIAGNOSTIC, PLLC, ST. PAVLY P.T.,  
P.C., TARGEE MEDICAL SERVICES, P.C., VALLEY  
MEDICAL CARE, P.C., VESPA SUPPLY, INC., VG  
ACUPUNCTURE, P.C., WESTENDBAY ENTERPRISES, INC.,  
ALEXANDER ALPEROVICH, M.D., ALEKSANDR MOSTOVY,  
GLENN GOLDSTEIN, M.D., MICHAEL GREEN, M.D., VISTA  
DIAGNOSTIC IMAGING, VLADIMIR GREEN, M.D., VISTA  
DIAGNOSTIC IMAGING and VLADIMIR GRODSKIY, L.Ac.,

Provider Defendants.

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The plaintiff's motion, a) pursuant to CPLR 5015, to vacate this Court's June 21, 2010 judgment as against the defendants Richmond Radiology, P.C. and All Boro Psychological Services, P.C., and b) thereafter, pursuant to CPLR 3212, for summary judgment on its declaratory judgment action as against those defendants, is determined as hereinafter provided.

That branch of the plaintiff's motion, pursuant to CPLR 5015, to vacate the June 21, 2010 judgment (see movant's Exhibit C) as against the defendants Richmond Radiology, P.C. and All Boro Psychological Services, P.C., is granted, without opposition. Their February 11, 2010 and April 12, 2010 respective answers (see movant's Exhibit B) shall therefore be deemed timely interposed.

However, the August 23, 2010 affidavit of the plaintiff's agent, Gary Lamay, and accompanying documentary evidence is sufficient to establish its *prima facie* entitlement to summary judgment (see CPLR 3212). In opposition, the affirmations of Richmond Radiology and All Boro's respective counsel, who, *inter alia*, lack personal knowledge of the facts, are inadequate to create a triable issue of fact. (Indeed, the 9/23/10 purported affirmation in opposition on behalf of the defendant Richmond Radiology, P.C. is unexecuted). Accordingly, that branch of the plaintiff's motion, pursuant to CPLR 3212, seeking summary judgment as to those defendants is granted (see State Farm Mut. Ins. Co. v Langan, 55 AD3d 281).