

Nationwide Gen. Ins. Co. v Bates

2012 NY Slip Op 33794(U)

April 30, 2012

Supreme Court, Nassau County

Docket Number: 012425/11

Judge: Thomas P. Phelan

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This opinion is uncorrected and not selected for official publication.

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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present: **HON. THOMAS P. PHELAN,**
Justice.

Nationwide General Insurance Company,

TRIAL/IAS PART 2
NASSAU COUNTY

Plaintiffs

Index No. 012425/11

-against-

Linwood Bates III, Dwayne Bryan, Christina Robles,
Jabes Nunez, Christopher Morales, Jaime Joseph,
Kareem James, Miguel Ortiz, Elizabeth Sellers, Allen
Sellers, Edward Richardson, Tristian McCall
(Individual Defendants),

MOTION SEQUENCE #002
ORIGINAL RETURN DATE:
03/02/12
SUBMISSION DATE: 03/02/12

-and-

5S & A Rehab Physical Therapy, PC, Active Care
Medical Supply, Corp., Arcadia Imaging, PC, Baron
Lea, Inc., Big Apple Chiropractic, PC, Bronx Boulevard
Medical, PC, Bronx Modern Medical Pavillion, PC,
Brooklyn Anesthesia Group, PC, Community Medical
Care of NY, PC, Diagnostid Chiropractic Services, PC,
Dynamic Pro Physical Therapy, PC, East Tremont
Medical, PC, East Tremont Medical Center, Eastchester
Precision Medical, PC, Expert Massage Therapy, PC,
Five Boro Psychological and Licensed Social Master
Social Work Services, PLLC, FYZ Acupuncture, PC,
Garden Medical Diagnostics, PC, Heights Chiropractic
Services, PC, Heights Surgicare AKA The Heights
Surgicare, Hu Nam Nam, Jadwiga Pawlowski, Lemonti
Medical, PC, M. Sadees, MD, PC, Mobility Experts
Medical, PC, Power Supply, Inc., Quest Supply, Inc.,
RB Chiropractic Care, PC, Richard M. Seldes, MD, PC,
Socrates Medical Health, PC, Southern 788 Medical,
PC, St. Lukes Roosevelt Hospital, Star Medical &
Diagnostic, PLLC, Steven Struhl, MD, PLLC, Supreme
Health Chiropractic, PC, Ultimate Health Products, Inc.,
Wellcare Chiropractic, PC, Zion Acupuncture, PC
(Provider Defendants)

Collectively, the Defendants.

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:

- Jabes Nunez, Jaime Joseph, Miguel Ortiz, Elizabeth Sellers, Allen Sellers, Edward Richardson, Tristian McCall, 5S & A Rehab Physical Therapy, Arcadia Imaging, PC, Baron Lea, Inc., Bronx Boulevard Medical, PC, Brooklyn Anesthesia Group, PC, Bronx Modern Medical Pavillion, PC, Community Medical Care of NY, PC, Diagnostid Chiropractic Services, PC, Dynamic Pro Physical Therapy, PC, East Tremont Medical, PC, East Tremont Medical Center, Eastchester Precision Medical, PC, Expert Massage Therapy, PC, FYZ Acupuncture, PC, Garden Medical Diagnostics, PC, Heights Chiropractic Services, PC, Heights Surgicare AKA The Heights Surgicare, Jadwiga Pawlowski, Lemonti Medical, PC, M. Sadees, MD, PC, Mobility Experts Medical, PC, Power Supply, Inc., Quest Supply, Inc., RB Chiropractic Care, PC, Richard M. Seldes, MD, PC, Socrates Medical Health, PC, Southern 788 Medical, PC, St. Lukes Roosevelt Hospital, Star Medical & Diagnostic, PLLC, Steven Struhl, MD, PLLC, Supreme Health Chiropractic, PC, Wellcare Chiropractic, PC, Zion Acupuncture, PC

(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 Christina Robles, Christopher Morales, Dwayne Bryan, Hu Nam Nam, Kareem James and Linwood Bates III.

By Stipulation dated February 22, 2011, the action was discontinued as to Arcadia Imaging, PC and Socrates Medical Health, PC only. Accordingly, the caption of the action is amended to delete Arcadia Imaging, PC and Socrates Medical Health, PC as defendants.

Plaintiff brings this action seeking a declaratory judgment that plaintiff has no duty

to provide liability coverage or no-fault or uninsured motorist benefits or to defend or indemnify any of defendants with respect to the underlying incidents of September 14, 2010, October 5, 2010, and December 1, 2010, under the policies of insurance issued to defendant Lindwood Bates III.

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 Kari Francisco, Claims Specialist III of plaintiff, as well as a copy of the verified complaint (Ex. A).

Ms. Francisco avers that the claimants willfully caused the subject losses in an attempt to commit insurance fraud. With regard to the September 14, 2010, loss EUOs were requested of defendants Christina Robles, Jabes Nunez and Christopher Morales but only Jabes Nunez appeared (Francisco Aff. ¶17). It became apparent during Mr. Nunez' EUO that the subject incident was not an accident but a caused loss (Id. ¶20).

With regard to the October 5, 2010, incident EUOs were requested of defendants Miguel Ortiz, Joseph Jaime and Kareen James but only Miguel Ortiz appeared (Francisco Aff. ¶ 27). It became apparent during Mr. Ortiz' EUO that the subject incident was not an accident but a caused loss (Id. ¶30).

With regard to the December 1, 2010, incident EUOs were requested of defendants Tristian McCall, Elizabeth Sellers, Allen Sellers and Edward Richardson, all of whom failed to appear (Francisco Aff. ¶ 40). Failure to attend an EUO is a breach of the insurance contract (Id. ¶49).

Ms. Francisco avers that "[n]o party to [these losses] has furnished any proof to demonstrate that the subject [losses were] in fact an **accident** as opposed to one of a series of intentional acts designed to defraud Nationwide and the public" (Francisco Aff. ¶24, 34, 48).

The Individual Defendants purportedly sought treatment from the Provider Defendants for the injuries alleged to have been sustained as a result of the alleged

accidents.

Based upon all of the foregoing, plaintiff's motion for a default judgment is granted as against all of the Defaulting Defendants, with the exception of Arcadia Imaging, PC and Socrates Medical Health, PC.

Submit judgment.

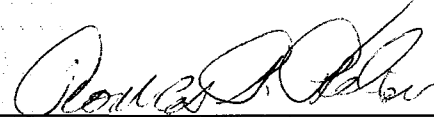
Plaintiff's unopposed motion for an order, pursuant to CPLR 306-b, extending the time in which to serve defendants, Christina Robles, Christopher Morales, Dwayne Bryan, Hu Nam Nam, Kareem James and Linwood Bates, III, is granted.

Plaintiff has adequately demonstrated its attempts at service upon defendants, Christina Robles, Christopher Morales, Dwayne Bryan, Hu Nam Nam, Kareem James and Linwood Bates, III. The court, therefore, extends plaintiff's time to serve defendants, Christina Robles, Christopher Morales, Dwayne Bryant, Hu Nam Nam, Kareem James and Linwood Bates, III, "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 May 30, 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: April 30, 2012


THOMAS P. PHELAN, J.S.C.

ENTERED
MAY 01 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE