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CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: PART 15N

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ADVANCED MEDICAL REHAB, P.C. a/a/o, ANA LABORDE,

Plaintiff,

Index Number: 96661/08

Decision After Non-Jury Trial

- against -

N. Y. CENTRAL MUTUAL FIRE INSURANCE CO.,

Defendant.  
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Arthur F. Engoron, Judge

After a non-jury trial on or about 5/14/10, supplemented by helpful post-trial submissions, this Court finds and adjudges that defendant is entitled to judgment dismissing the instant action.

Counsel for the respective parties stipulated to most or all of the essential facts of this first-party no-fault benefits case. Simply put, plaintiff submitted bills; defendant requested an Examination Under Oath ("EUO") of plaintiff's principal, Dr. John McGee; Dr. McGee refused to attend unless he was told the "basis" of the examination; defendant denied the bills on the ground of Dr. McGee's refusal; and plaintiff sued. Plaintiff conceded that defendant had a good-faith basis for requesting the EUO; and defendant conceded that it refused to provide that basis in advance.

The instant case must be dismissed for two independent reasons. First, as a matter of law, this Court does not believe that defendant was obligated to indicate the basis of the EUO request, or the subject matter thereof. Second, in any event, as a matter of fact, this Court finds that defendant did indeed indicate the basis and subject matter of the EUO, to wit, whether Dr. McGee actually operated plaintiff's facility as required by New York law.

Thus, the clerk is hereby directed to enter judgment in favor of defendant dismissing the instant action.

Dated: July 2, 2010



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Arthur F. Engoron, J.C.C.