

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS

At an IAS Term part 32 of the Supreme Court, of the State of New York held in & for the County of Kings, at 360 Adams Street, Brooklyn, New York on the 20 day of December 2012.

ORDER

USAA GENERAL INDEMNITY COMPANY,

Plaintiff,

Index No.: 4339/11

-against-

JOSE A. BONILLA, SHIRLEY CONTRERAS, MARIA LEDESMA, ALFREDO LAFORD, ALEXANDER BASILIO, DOMINGA POLANCO, GIOVANY G. DELACRUZ, PEDRO A. RAMIREZ, NATHANIEL CLARK, BRIAN THOMAS, R M MERCEDES SIME, VISENTICO VALERIO, JUAN GONZALEZ, HENRY MORONTA-HERNANDEZ, PABLO DEL-ROSARIO, EVA RINCON, TIARA RODRIGUEZ, DANIEL NUNEZ-JIMENEZ, JOSE RODRIGUEZ, MARCUS ALAMO, ROHAMMY JESUS GUZMAN, ESCRAWLY STRONG, JOEL PENA, LUIS TORRES A/KA/ LOUIS TORRES, JOSE AGUILERA-RODRIGUEZ, EDGAR PEREZ, EDGAR FERNANDEZ, FELIPE MERCADO, FELIX C. JIMENEZ, JR., IGNACIO M. ALMONTE, LUIS ALMONTE, ADA URENA, HILDA BAUTISTA RUIZ, LENNIE Y ACEVEDO, VLADIMIR JESUS PIMENTEL, MASSIEL VASQUEZ, BRIAN ENCARNACION A/K/A BRIAN ENCARNACION DOWNI, and EDUARDO PEREZ,

Participating Defendants,

LONNIE R. MELVIN, HATTIE MELVIN, JENEAN MELVIN, BRITTANY MELVIN, GARY MELVIN, GUADALUPE HERNANDEZ, JOSEPH ROSARIO, FREDDY R. IDROVO, ANA M. CABRERA, VICENTE IDROVO, MIRYAN QUITUSACR, DHALIWAL S. JASVIT, CHANDRA ROY SREE, LAWRENCE MILLER, KELVIN M. SMITH, MICHAEL SANCHEZ, SAMUEL MARTINEZ, ANGELICA MARTINEZ, JOSE ORELLANO, NYELL GILLARD, KENDELL GILLARD, CHRISTINO C. ARROYO, VICKY NATAL, JEAYNETTE PONCE, FIDEL M. CASILLA, JORGE CASILLA and JOSE MATO,

Adverse Vehicle Party Defendants,

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AA ACUPUNCTURE PAIN MANAGEMENT P.C.,
ACCESS MEDIQUIP, LLC, ADVANCED PSYCHOLOGICAL
CARE, P.C., ALBERT GRAZIOSA MD, PC, ALLIANCE
ANESTHESIOLOGY ASSOCIATES, P.L.L.C., AMEGA, INC.,
AP ORTHOPEDIC AND REHABILITATION, P.C.,
AUSTIN DIAGNOSTIC MEDICAL, P.C., AVICENNA
MEDICAL ARTS, PLLC, BACK PAIN AND HEADACHE
CENTER, BAY MEDICAL DIAGNOSTICS, P.C., BEST
ACUPUNCTURE, P.C., BORIS KHAIMOV, M.D., CITY
MEDICAL DIAGNOSTICS, P.C., COMMUNITY MEDICAL
CARE OF NY, P.C., DANIEL P. KLEIN, M.D., DENNY X
RODRIGUEZ, M.D., DIAGNOSTIC CHIROPRACTIC
SPECIALTIES, P.C., DOCTOR OF MEDICINE IN THE
HOUSE, P.C., DOVPHIL ANESTHESIOLOGY GROUP, PLLC,
EAST 75TH STREET DIAGNOSTIC IMAGING, P.C.,
EASTCHESTER PRECISION MEDICAL, P.C., EGA GROUP,
INC., EPOCA CHIROPRACTIC CARE, P.C., ESSENTIAL
REHAB PT, PC, EVOLUTION CHIROPRACTIC, P.C.,
EZ ACUPUNCTURE, P.C., EZEKIEL AKANDE, MEDICAL
SERVICES, P.C, FELICITY MEDICAL CARE, P.C., FOREST
HILLS MEDICAL ASSOCIATES, P.C., GABA MEDICAL, P.C.,
GALAXY CHIROPRACTIC, P.C., HABIBA, P.T., P.C.,
HEALING ART ACUPUNCTURE, P.C.,
IDF MEDICAL DIAGNOSTIC PC, INFINITY HEALTH
PRODUCTS, LTD., J. C. HEALING TOUCH REHAB, PT PC,
JEAN R. CAYETANO, KINGSHWY PSYCHOLOGICAL,
P.C., LEICA SUPPLY, INC., LONGWOOD ACUPUNCTURE,
P.C., MANHATTAN COMPREHENSIVE MEDICINE, PLLC,
MARK S. MCMAHON, M.D., P.C., MORRIS PARK HEIGHTS
CHIROPRACTIC, P.C., MUSCLES AND BONES, P.T., P.C.,
NEW AGE CHIROPRACTIC, P.C., NEW HYDE PARK
IMAGING, P.C., OLMEUR MEDICAL, P.C., ORANGE
ACUPUNCTURE, P.C., PARK SLOPE MEDICAL AND
SURGICAL SUPPLY, INC., PHC SERVICES, P.C.,
DR. MICHAEL CHILLEMI, PHYSICAL ASSESSMENTS
CHIROPRACTIC, P.C., PMR MEDICAL AND DIAGNOSTIC,
P.C., POWERFUL HEALING ACUPUNCTURE, P.C.,
PREMIER SURGICAL SERVICES, P.C., PRIORITY MEDICAL
DIAGNOSTICS, P.C., PROVVEDERE, INC., QUALITY
PSYCHOLOGICAL SERVICES, P.C., QUEENS SURGI-CENTER,
RDB MEDICAL CARE, P.C., ROBERT DELLA BADIA, M.D.,
ROM MEDICAL, P.C., SANJIV BANSAL, M.D, P.C.,
SEARAY MEDICAL P.C., SER SANO, INC., SHAHID MIAN,
M.D., P.C., SOCRATES MEDICAL HEALTH, P.C.,
SOPHORA DIAGNOSTIC LAB, INC., SOUTH END
CHIROPRACTIC, P.C., SS MEDICAL CARE, P.C.,
ST. MARK'S HEALTH CARE, P.L.L.C., STATEN ISLAND
MEDICAL AND SURGICAL SUPPLY, INC., SURGICARE

AMBULATORY CENTER, INC., SYNERGY FIRST INTERNATIONAL, LLC, THERACARE, PHYSICAL THERAPY, P.C., TRUE-ALIGN CHIROPRACTIC CARE, P.C., UNITED ORTHO SUPPLY, INC., VESPA SUPPLY, INC., V & T MEDICAL, P.C., WEBSTER DST MEDICAL, P.C., WEST COAST INC., WESTEND BAY ENTERPRISES, INC., WINDY CITY MEDICAL SUPPLY, INC. and ZG CHIROPRACTIC, CARE, P.C.

Provider Defendants.

S I R S:

UPON the summons and complaint seeking a declaration of no coverage having been filed by USAA GENERAL INDEMNITY COMPANY (hereinafter referred to as "USAA") by the purchase of an Index number on or about February 24, 2011, see **Exhibit "A"**, and

UPON the defendant VLADIMIR JESUS PIMENTEL having agreed to waive any and all no-fault claims arising out of the 11 losses which are part of this declaratory judgment action with prejudice, see **Exhibit "B"**, and

UPON the following 17 defendants having agreed to waive any and all no-fault claims arising out of the underlying 11 losses which are part of this declaratory judgment action with prejudice:

- i. ALBERT GRAZIOSA, MD, PC, Provider Defendant
- ii. ALLIANCE ANESTHESIOLOGY ASSOCIATES, P.L.L.C., Provider Defendant
- iii. AMEGA, INC., Provider Defendant
- iv. AP ORTHOPEDIC AND REHABILITATION, P.C., Provider Defendant
- v. BAY MEDICAL DIAGNOSTICS, P.C., Provider Defendant
- vi. BORIS KHAIMOV, M.D., Provider Defendant
- vii. DOCTOR OF MEDICINE IN THE HOUSE, P.C., Provider Defendant
- viii. EAST 75TH STREET DIAGNOSTIC IMAGING, P.C., Provider Defendant
- ix. FOREST HILLS MEDICAL ASSOCIATES, P.C., Provider Defendant
- x. PREMIER SURGICAL SERVICES, P.C., Provider Defendant
- xi. PRIORITY MEDICAL DIAGNOSTICS, P.C., Provider Defendant
- xii. PROGRESSIVE ORTHOPEDICS, PLLC, Provider Defendant
- xiii. QUEENS SURGI-CENTER, Provider Defendant
- xiv. SOCRATES MEDICAL HEALTH, P.C., Provider Defendant
- xv. SYNERGY FIRST INTERNATIONAL, LLC, Provider Defendant

- xvi. UNITED ORTHO SUPPLY, INC., Provider Defendant
- xvii. VESPA SUPPLY, INC., Provider Defendant

See **Exhibit "C"**, and

UPON USAA's motion for default judgment and containing over 1,000 pages of exhibits, including more than 100 affidavits of service regarding service of process on the defendants and more than 900 pages of evidence, including police reports, medical records, criminal records, deposition transcripts, NICB (National Insurance Crime Bureau) reports, insurance policies as well as claim history searches regarding the defendants herein, and

UPON USAA's first motion for default judgment against approximately 100 defendants dated June 28, 2011, and

UPON your undersigned appearing in the Supreme Court, Kings County before Judge Ellen Spodek on September 26, 2011 for oral argument at which time an Order was signed granting a default judgment against approximately 100 defendants, see **Exhibit "D"**, and

UPON Judge Spodek's Order dated September 26, 2011 also allowing USAA to serve the remaining defendants via publication, see **Exhibit "D"**, and

UPON Judge Spoken's subsequent Order dated December 12, 2011 allowing publication to be performed in Kings County, see **Exhibit "E"**, and

UPON publication being completed with Brooklyn Heights Press and Cobble Hill News running consecutive ads on December 15, 2011, December 22, 2011, December 29, 2011 and January 5, 2012 pursuant to Judge Spodek's Order dated December 12, 2011, see **Exhibit "E"**, and

UPON the failure of those defendants served via substituted service publication (pursuant to Judge Spodek's Order dated December 12, 2011) to answer and/or appear in the action, and

UPON USAA's 2nd motion for a default judgment against those defendants served via publication who failed to appear, dated April 20, 2012 for a default judgment, and

UPON your undersigned appearing in the Supreme Court, Kings County before Judge Yvonne Lewis on the Motion Trial Term, Part 32 on September 14, 2012, and

UPON no opposition in writing or in person by any of the defaulting parties (served by publication), it is hereby

ORDERED that plaintiff USAA's motion for a default judgment against the defaulting defendants (served by publication) is granted, it is

FURTHER ORDERED that USAA's motion for a default judgment against the defendants served via publication is granted specifically with regard to:

- a) granting USAA judgment by default in its declaratory judgment action pursuant to CPLR §3215, against the defendants VISENTICO VALERIO, EVA RINCON, TIARA RODRIGUEZ, ESCRAWLY STRONG, JOEL PENA, FELIPE MERCADO, HILDA BAUTISTA RUIZ, KELVIN M. SMITH, JOSE ORELLANO, NYELL GILLARD, KENDALL GILLARD, CHRISTINO C. ARROYO, NEW AGE CHIROPRACTIC, P.C., DENNY X. RODRIGUEZ, M.D., JEAN R. CAYETANO, ROBERT DELLA BADIA, M.D., WEST COAST, INC., JOSEPH ROSARIO, LAWRENCE MILLER, SAMUEL MARTINEZ, ANGELICA MARTINEZ, JEAYNETTE PONCE and JOSE MATA; and

IT IS FURTHER ORDERED that the accidents of:

1. September 17, 2008
2. October 26, 2008
3. November 19, 2008
4. December 29, 2008
5. April 7, 2009
6. August 3, 2009
7. August 20, 2009
8. August 21, 2009
9. August 26, 2009
10. November 6, 2009
11. November 10, 2009

Were all intentional events with respect to all defaulting defendants.

IT IS FURTHER ORDERED that the accidents of:

1. September 17, 2008

- 2. October 26, 2008
- 3. November 19, 2008
- 4. December 29, 2008
- 5. April 7, 2009
- 6. August 3, 2009
- 7. August 20, 2009
- 8. August 21, 2009
- 9. August 26, 2009
- 10. November 6, 2009
- 11. November 10, 2009

were uncovered events with respect to all defaulting defendants, and

IT IS FURTHER ORDERED that USAA has no duty to provide coverage for claims of BI, UM, SUM or no-fault benefits made by and/or on behalf of all defaulting defendants in connection with the underlying accidents of:

- 1. September 17, 2008
- 2. October 26, 2008
- 3. November 19, 2008
- 4. December 29, 2008
- 5. April 7, 2009
- 6. August 3, 2009
- 7. August 20, 2009
- 8. August 21, 2009
- 9. August 26, 2009
- 10. November 6, 2009
- 11. November 10, 2009

**HON. YVONNE LEWIS
J.S.C.**

J.S.C.

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