

<p>Matter of Country-Wide Ins. Co. v Soto</p>
<p>2014 NY Slip Op 32591(U)</p>
<p>October 6, 2014</p>
<p>Supreme Court, New York County</p>
<p>Docket Number: 651307/14</p>
<p>Judge: Michael D. Stallman</p>
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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 21

In the Matter of the Application of
COUNTRY-WIDE INSURANCE COMPANY,

INDEX NO. 651307/14

MOTION DATE 8/6/14

Petitioner,

- v -

MOTION SEQ. NO. 001

For an Order Staying the Arbitration Demanded by JOSE
SOTO, Jr.,

Respondents

-and-

MICHAEL ANGELO ROSARIO, LUZ CINDY DIAZ,
PERMANENT GENERAL ASSURANCE CORPORATION,
THE GENERAL INSURANCE COMPANY and GMAC,

Proposed Additional Co-Respondents.

The following papers, numbered 1 to 2, 5-9, 11, 13-16, were read on this petition to stay arbitration

Verified Petition; Notice of Petition; Exhibits A; B; C; D; E

No(s). 1; 2; 5; 6; 7; 8;
9

Verified Answer

No(s). 11

Affirmation in Opposition; Exhibits A; B; C

No(s). 13; 14; 15; 16

Upon the foregoing papers, it is ORDERED that this petition to stay arbitration is granted to the extent that a framed issue hearing is directed, and the arbitration is stayed pending such framed issue hearing, and that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this Court (or to hear and determine, upon stipulation of the parties) on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose:

- 1) the issue of whether there was insurance coverage on January 25, 2013 for the vehicle driven by Michael Angelo Rosario and registered to Luz Cindy Diaz bearing Pennsylvania license plate no. HYN4082, and whether The General Insurance Company (GIC) and Permanent General

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Assurance Corporation (PGAC) and GMAC insured the vehicle on that date

2) the issue of whether the Court acquired personal jurisdiction over proposed additional respondents GIC, PGAC, Michael Angelo Rosario, Luz Cindy Diaz, and GMAC.

ORDERED that the powers of the JHO/Special Referee shall not be limited further than as set forth in the CPLR; and it is further

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or (spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part, shall assign this matter to an available JHO/Special Referee to hear and report as specified as above (or to hear and determine, upon stipulation of the parties), and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 30 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (available at <http://www.courts.state.ny.us/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part or by the JHO/Special Referee in accordance with the Rules of that Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320 [a]) and,

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except as otherwise directed by the assigned JHO/Special Referee, the trial of the issues specified above shall proceed day to day until completion; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this Court in any Order that may be issued together with this Order of Reference to Hear and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending submission of the Report of the JHO/Special Referee and the determination of this Court thereon; and it is further

ORDERED that petitioner is directed to effectuate personal service of a copy of this order with notice of entry, together with copies of all papers previously served in the proceeding, upon proposed additional respondents GIC, PGAC, Michael Angelo Rosario, Luz Cindy Diaz, and GMAC, who upon such personal service shall be added as party respondents; and it is further

ORDERED that the caption of this proceeding is amended to reflect inclusion of said additional party respondents as follows:

**In the Matter of the Application for an Order Staying
the Arbitration between**

COUNTRY-WIDE INSURANCE COMPANY,

Petitioner,

- v -

**JOSE SOTO, Jr., MICHAEL ANGELO ROSARIO, LUZ
CINDY DIAZ, PERMANENT GENERAL ASSURANCE
CORPORATION, THE GENERAL INSURANCE
COMPANY and GMAC**

Respondents.

(Continued . . .)

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and it is further

ORDERED that the County Clerk (60 Centre St Room 141B) and the Clerk of the Trial Support Office (60 Centre St Room 119) shall mark their records to reflect the amendment, upon service by petitioner on each of them of a copy of this order with notice of entry and a copy of an affidavit of personal service upon the proposed respondents.

This petition to stay an uninsured motorist arbitration arises out of a motor vehicle accident that allegedly occurred on January 25, 2013 at East 118th Street and Third Avenue in Manhattan. Petitioner is the insurer of the vehicle driven by respondent Jose Soto, Jr. and allegedly owned by Luis A. Guzman. According to a police report, the other vehicle allegedly involved in the accident was a vehicle with Pennsylvania license plate HYN4082, allegedly driven by Michael Angelo Rosario and owned by Luz Cindy Diaz.

Petitioner submits vehicle records, which indicate that Diaz's vehicle was insured by GIC, PGAC, GMAC (Petition Ex. D, E.) According to proposed additional respondents, GIC, PGAC, GMAC, they disclaimed coverage for the alleged accident because Rosario was not listed on any policy, nor was he a duly licensed driver at the time of the accident, pursuant to the exclusions in the policy of insurance issued to Diaz. (Baer Opp. Affirm., Manus Opp. Affirm. Ex B.)

Because a factual question arises as to whether GIC, PGAC, GMAC disclaimed coverage to Diaz for the motor vehicle accident on January 25, 2013, this issue is hereby referred to a JHO or Special Referee to hear and report (or to hear and determine, upon stipulation of the parties).

As petitioner indicates, GIC, PGAC, Rosario, Diaz, and GMAC must be joined as additional respondents to this proceeding, to afford them an opportunity to be heard on the issue of whether Diaz's vehicle was insured by GIC, PGAC, and GMAC on the date of the alleged accident. Therefore, petitioner's request to add them as additional respondents and to amend the caption accordingly is granted. Petitioner is reminded that "[j]urisdiction over a nonparty to a proceeding to stay arbitration cannot be obtained by the service upon

(Continued . . .)

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it of the notice of petition and petition by either ordinary mail or certified mail, whether or not such service is authorized by a court order." (*Matter of American Transit Ins. Co. v Carillo*, 307 AD2d 220 [1st Dept 2003].)

Therefore, affidavits of the personal service directed herein shall be submitted in the Special Referee Part at the first appearance before the Special Referee, who is also empowered to hear and report (or hear and determine, if all the parties so stipulate) whether the Court has personal jurisdiction over the proposed additional respondents.

Finally, the branch of the petition seeking an order directing respondent Jose Soto, Jr. to provide medical records and authorizations, and to appear for an examination under oath and a medical examination prior to the arbitration is granted. (*Matter of New York Cent. Mut. Fire Ins. Co. v Serpico*, 45 AD3d 598 [2d Dept 2007]; *Matter of Allstate Ins. Co. v Baez*, 269 AD2d 392, 393 [2d Dept 2000].)

HON. MICHAEL D. STALLMAN

Dated: 10/6/14
New York, New York



, J.S.C.

1. Check one:.....
2. Check if appropriate:.....PETITION IS:
3. Check if appropriate:.....

CASE DISPOSED NON-FINAL DISPOSITION
 GRANTED DENIED GRANTED IN PART OTHER
 SETTLE ORDER SUBMIT ORDER
 DO NOT POST FIDUCIARY APPOINTMENT REFERENCE