

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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PHILADELPHIA 76ERS L.P.,

Plaintiff,

No. 04-CV-4972 (EL)

v.

TRUSTMARK INSURANCE COMPANY, and NEW  
JERSEY NETS BASKETBALL LLC,

Defendants.  
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**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2004, upon consideration of the Motion of Defendant Trustmark Insurance Company to Stay the Plaintiff's Motion to Compel Arbitration pending resolution of Trustmark's Motion to Dismiss or, in the alternative, Motion to Transfer and all responses thereto, it is hereby,

ORDERED that the Motion is GRANTED.

\_\_\_\_\_  
Hon. Edmund V. Ludwig, USDJ

**IN THE UNITED STATES DISTRICT COURT  
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PHILADELPHIA 76ERS L.P.,

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No. 04-CV-4972 (EL)

v.

TRUSTMARK INSURANCE COMPANY, and NEW  
JERSEY NETS BASKETBALL LLC,

Defendants.

**EMERGENCY MOTION OF TRUSTMARK INSURANCE COMPANY  
TO STAY THE MOTION TO COMPEL ARBITRATION**

Defendant Trustmark Insurance Company ("Trustmark"), for the reasons set forth more fully in the accompanying Memorandum in Support, which is incorporated herein by reference, respectfully moves this Court for an emergency Order staying plaintiff's Motion to Compel Arbitration pending resolution of Trustmark's Motion to Dismiss.

November 22, 2004

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**IN THE UNITED STATES DISTRICT COURT  
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PHILADELPHIA 76ERS L.P.,

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**TRUSTMARK INSURANCE COMPANY'S MEMORANDUM  
OF LAW IN SUPPORT OF ITS EMERGENCY MOTION  
TO STAY THE MOTION TO COMPEL ARBITRATION**

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Attorneys for Trustmark Insurance Company

Defendant Trustmark Insurance Company (“Trustmark”) respectfully submits this Memorandum of Law in Support of its Emergency Motion to Stay the Motion to Compel Arbitration filed by Philadelphia 76ers L.P. (“the 76ers”) on November 4, 2004 (the “Motion”) pending resolution of the Motion to Dismiss.

### **PRELIMINARY STATEMENT**

The dispute underlying this action belongs in arbitration, a position with which neither Trustmark nor the 76ers disagree. However, while the 76ers seek relief far beyond the jurisdiction of this, or any, Court, it was improperly filed in this district. As set forth in Trustmark’s Motion to Dismiss, or in the alternative, Motion to Transfer to the Southern District of New York, the parties have no agreement to arbitrate in this district and thus this Court (selected solely because it is the 76ers’ home forum) is not the proper venue to entertain the 76ers’ demands. Because venue is improper in this forum, until that issue is resolved and this Court decides whether it is to hear this case, the 76ers’ Motion to Compel should be stayed.

### **FACTUAL BACKGROUND**

Trustmark respectfully refers to its Memorandum of Law in support of its Motion to Dismiss for the factual background and procedural history.

### **ARGUMENT**

#### **THE 76ERS’ MOTION TO COMPEL ARBITRATION SHOULD BE STAYED**

The 76ers filed its Motion with this Court on November 4, 2004. As of the date hereof, the 76ers have not served Trustmark with that Motion, choosing instead to send a courtesy copy to Cleary, Gottlieb, Steen, & Hamilton, even though Cleary Gottlieb had not (prior to today) appeared on behalf of Trustmark in this action. As a result, there is not yet any scheduled deadline by which Trustmark is required to respond to the Motion.

In any event, because venue is improper in this forum, until that issue is resolved and this Court decides whether it is to hear this case, the Motion should be stayed. See, e.g., Chavous v. District of Columbia Fin. Responsibility & Mgmt. Assistance Auth., 201 F.R.D. 1 (D.D.C. 2001) (ordering all discovery stayed pending resolution of the parties' dispositive motions); Phillips USA, Inc. v. Allflex USA, Inc., No. 94-2012-JWL, 1994 WL 171725 (D. Kan. Apr. 15, 1994) (staying the action pending the court's resolution of a defendant's motion for summary judgment), Prows v. United States Dep't of Justice, Civ. A. No. 87-1657-LFO, 1988 WL 8256 (D.D.C. Jan. 22, 1988) (granting defendant's renewed motion for a stay of discovery pending resolution of the defendant's dispositive motion). Cf. Starr v. Runyon, Civ. A. No. 94-5413, 1995 WL 455840 (E.D. Pa. July 28, 1995) (granting defendant's motion to dismiss and accordingly denying defendant's motion to stay proceedings as moot).

### CONCLUSION

For the foregoing reasons, the 76ers' Motion should be stayed pending resolution of Trustmark's Motion to Dismiss.

November 22, 2004

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**CERTIFICATE OF SERVICE**

I, John B. Dempsey, hereby certify that a copy of the foregoing Emergency Motion of Trustmark Insurance Company to Stay the Motion to Compel Arbitration, the Memorandum in Support, and a proposed form of Order, were served by overnight mail upon the following parties and/or attorneys:

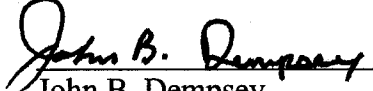
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