

Matter of Government Empls. Ins. Co. v Leacock

2016 NY Slip Op 32140(U)

August 24, 2016

Supreme Court, Suffolk County

Docket Number: 5007-16

Judge: Denise F. Molia

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Index No.: 5007-16

**SUPREME COURT - STATE OF NEW YORK
I.A.S. Part 39 - SUFFOLK COUNTY**

PRESENT:

Hon. **DENISE F. MOLIA**
Justice

In the Matter of the Application of GOVERNMENT
EMPLOYEES INSURANCE COMPANY to Stay
Arbitration,

Petitioner,

-against -

AUDREY EDWARDS,

Respondent,

and

ELVIS LEACOCK, EMPIRE BULK CARRIER, INC.,
and STARNET INSURANCE COMPANY,

Proposed Additional Respondents.

CASE DISPOSED: NO
MOTION R/D: 6/29/16
SUBMISSION DATE: 7/1/16
MOTION SEQUENCE No.: 001 MOT ADJ

ATTORNEY FOR PETITIONER
Law Office of Gail S. Lauzon
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Hicksville, New York 11801

ATTORNEYS FOR RESPONDENT
Zemsky & Salomon
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Hempstead, New York 11550

Elvis Leacock
122 Avenue B
Holbrook, New York 11741

See Annexed List

Upon the following papers filed and considered relative to this matter:

Notice of Petition and Petition dated May 16, 2016; Exhibits A through D annexed thereto; Affirmation in Opposition dated June 1, 2016; Exhibit A annexed thereto; Reply Affirmation dated June 9, 2016; and upon due deliberation; it is

ORDERED, that the petition of Government Employees Insurance Company, pursuant to CPLR 7503, for an Order permanently staying the uninsured motorist arbitration demanded by respondent, or in the alternative, temporarily staying the matter, adding various parties as additional respondents and setting the matter down for a Framed Issue Hearing to determine if the adverse vehicle was insured on the date of loss, is adjourned until November 4, 2016 pending the holding of a Framed Issue Hearing; and it is further

ORDERED, that the uninsured motorist arbitration sought by the respondent, Audrey Edwards, is hereby temporarily stayed pending a Framed Issue Hearing to be held on the issue of whether the offending vehicle owned by Empire Bulk Carrier, Inc., and operated by Elvis Leacock was uninsured; and it is further

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ORDERED, that within thirty (30) days of the date of entry herein, the petitioner is directed to serve an Amended Petition, joining Elvis Leacock, Empire Bulk Carrier, Inc., and Starnet Insurance Company, as respondents; and it is further

ORDERED, that a Framed Issue Hearing shall be held at 9:30 a.m. on November 3, 2016 at the Courthouse, One Court Street, Courtroom 431, Riverhead, New York, on the issue of whether the vehicle owned by Empire Bulk Carrier, Inc., and operated by Elvis Leacock, was insured on February 27, 2014.

The respondent, Audrey Edwards, alleges that she sustained personal injuries on February 27, 2014, when the vehicle she was operating was involved in a motor vehicle accident with a 2003 Kenoe Tractor Trailer bearing plate number 31643TR, owned by Empire Bulk Carrier, Inc., and operated by Elvis Leacock on Broadway, Town of Huntington, New York. On or about May 5, 2016, the petitioner received respondent's Demand for Arbitration of uninsured motorist benefits.

Petitioner brought the instant proceeding seeking to stay the arbitration, alleging that the respondent has failed to submit sufficient proof that the Empire/Leacock vehicle was, in fact, uninsured; such proof being a condition precedent to arbitration under the policy endorsement under which the claim was made. Petitioner notes that the Police Accident Report (MV-104A) prepared at the accident scene denotes in the box entitled "Ins. Code", the number "277", which is the code number assigned to Starnet Insurance Company ("Starnet"). The petition seeks either a permanent stay of the arbitration, or a temporary stay pending the holding of a framed issue hearing in which all necessary parties are joined and provided the opportunity to participate in the hearing.

The respondent does not oppose those portions of the petition to temporarily stay these proceedings pending the holding of a Framed Issue Hearing. At the present time, there remains a question of fact as to whether the Empire/Leacock vehicle was insured on the date of loss, and if so, by whom. Until such time as it is established that neither the vehicle owner or operator had a policy of coverage in effect on the date of loss, the UM/SUM coverage has not been triggered, and a valid claim to arbitration has not been demonstrated.

Based on the foregoing, the evidence before the Court at this time is insufficient to determine whether Starnet had issued a policy of insurance to Empire Bulk Carrier, Inc., prior to the date of the accident. In light of the uncertainty concerning the insurance status of the Empire/Leacock vehicle on the date of the accident, the Court must conduct a framed issue hearing on the issue of coverage with the participation of all parties who are necessary to the action. The amendment of the complaint to name the additional respondents will bring all interested and necessary parties before the Court.

The foregoing constitutes the Order of this Court.

Dated: August 24, 2016



HON. DENISE F. MOLIA A.J.S.C.

ATTORNEYS FOR ADDITIONAL RESPONDENTS

Empire Bulk Carrier, Inc.
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Riverhead, New York 11901

StarNet Insurance Company
215 Shuman Boulevard, Suite 200
Naperville, Illinois 60563

American Arbitration Association
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