

<b>Country-Wide Ins. Co. v Barry</b>
2019 NY Slip Op 33762(U)
December 27, 2019
Supreme Court, New York County
Docket Number: 654837/2019
Judge: Carol R. Edmead
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART IAS MOTION 35EFM

-----X

COUNTRY-WIDE INSURANCE COMPANY,	INDEX NO.	<u>654837/2019</u>
Plaintiff,	MOTION DATE	<u>N/A</u>
- v -	MOTION SEQ. NO.	<u>001</u>
MOHAMED BARRY, JOHN DOE, JOHN DOE INSURANCE COMPANY		
Defendant.	<b>DECISION + ORDER ON MOTION</b>	


-----X

HON. CAROL R. EDMEAD:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17  
were read on this motion to/for STAY

Upon the foregoing documents and the following memorandum decision, it is  
ORDERED and that the petition of Country-Wide Insurance Company is denied in its  
entirety; and it is further  
ORDERED that the Clerk shall enter judgment accordingly; and it is further  
ORDERED that Respondent shall serve a copy of this order, along with notice of entry,  
on all parties within 15 days of entry.

12/27/2019  
DATE

  
HON. CAROL R. EDMEAD; J.S.C. J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> SUBMIT ORDER
		<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> OTHER
		<input type="checkbox"/> REFERENCE

In this Article 75 Action, Country-Wide Insurance Company (Petitioner) moves for a permanent or temporary stay of an arbitration proceeding pending a Framed Issue Hearing. In the alternative, Petitioner asks the court to temporarily stay the pending submission by Mohamed N. Barry (Respondent) to various discovery demands pursuant to Petitioner's insurance policy conditions. Respondent opposes the motion.

### BACKGROUND FACTS

This action arises out of a car accident that occurred on February 2, 2019, when a vehicle driven by Respondent was struck in the rear by an unknown vehicle that left the scene. Respondent stepped out of his vehicle after he was hit by the unknown vehicle and took down the plate number NYS DXL6788 as the vehicle sped away (NYSCEF doc No. 1, ¶ 5). After Petitioner rejected Respondent's claim for uninsured motorist benefits on the grounds that the adverse driver was not uninsured, Respondent filed a demand for arbitration on August 5, 2019 (*id.* at ¶ 3). Petitioner also commenced its own internal investigation to attempt to identify the driver who fled the scene in order to ascertain coverage (NYSCEF doc No. 1, ¶ 5). Petitioner now wishes to stay the proceeding pending the outcome of a Framed Issue Hearing on the issue of insurance coverage. It has named as Proposed Additional Respondents the unidentified driver who caused the accident and his or her insurance company, referred to as "John Doe" and "John Doe Insurance Company." Petitioner also claims that Respondent has not complied with pre-arbitration conditions precedent, including an examination under oath and the exchange of medical records. Respondent, in opposition to the petition, argues that he has fully complied and that the proposed Framed Issue Hearing is an unnecessary delay tactic.

## DISCUSSION

A party seeking a stay of arbitration pursuant to Article 75 has the burden of establishing a “genuine triable issue” that justifies the relief. (*Matter of Empire Mut. Ins. Co. [Zelin]*, 120 AD2d 365 [1st Dept 1986]). When such an issue exists, “the appropriate procedure is to stay the arbitration pending a trial of the threshold issue.” *Id.* If the moving party cannot establish any preliminary triable matter, the stay will not be granted. It is well established that an insurer is entitled to obtain all relevant information to evaluate claims prior to an arbitration hearing. (*Progressive Ne. Ins. Co. v. Vandusen*, 22 Misc. 3d 1128[A] [Sup. Ct. 2009]). Therefore, the failure of a party to provide an insurer with relevant discovery pursuant to its policy provisions may constitute a justifiable delay of an arbitration hearing. However, “the right to secure the discovery of the information is considered waived if the insurer unreasonably delays in the exercise of that right.” (*Matter of Allstate Ins. Co. v Urena*, 208 AD2d 623 [2nd Dept 1994]). A stay is therefore not warranted if the insurer unreasonably delays when it had ample time to seek discovery and fails to do so. If an insurer can demonstrate a “justifiable excuse” for its failure to promptly seek discovery, a temporary stay of arbitration may be granted. (*Matter of Government Employees Ins. Co. v Mendoza*, 69 AD3d 623 [2nd Dept 2010]). Examples of circumstances that may justify a reasonable delay include continued settlement negotiations and newly divulged information revealing injuries more severe than originally understood. (*Matter of Metropolitan Prop. & Cas. Ins. Co. v Keeney*, 241 AD2d 455 [2nd Dept 1997]).

Here, the Court finds that Petitioner has not demonstrated any basis for a stay of the arbitration proceeding. Respondent submitted a sworn statement, MV104, application for no-fault benefits, and a copy of the police report when he made his initial claim in February 2019 (NYSECF doc No. 13 at 2). Petitioner has been aware of Respondent’s medical condition and

has not demonstrated that Respondent has willingly failed to comply with requests for additional records. The facts here are therefore distinguishable from cases where courts found that an insurer's delay in seeking discovery was justified because a claimant refused to comply with or ignored discovery demands. Petitioner also claims that Respondent's arbitration is premature pending the outcome of a Framed Issue Hearing to ascertain the identity and insurance coverage of the driver at fault. However, Petitioner has been aware of this claim since February 2019, and has its own pending investigation of the identity of the driver (NYSCEF doc No. 1, ¶ 5). Petitioner demonstrates no basis for why a separate Framed Issue Hearing is necessary, or why said hearing would lead to any results not already obtained by the current investigation, especially as Petitioner has introduced no evidence supporting the notion that the adverse driver was uninsured (NYSCEF doc No. 13 at 2). A Framed Issue Hearing would thus serve no purpose beyond delaying Respondent's arbitration, solely because Petitioner merely hopes that additional insurance coverage can be found.

It should be noted that information disclosures can still be conducted prior to arbitration hearings, even in the absence of a stay, if such disclosure is warranted by the circumstances. (*Vandusen*, 22 Misc. 3d 1128[A]). If further medical examinations and an examination under oath are truly necessary for arbitration, as Petitioner claims, Petitioner should schedule them before the arbitration hearing. However, the hearing need not be further postponed to accommodate these examinations. Respondent should, of course, cooperate in complying with any additional discovery measures that are scheduled prior to the hearing. Regardless, Petitioner's application for a stay of arbitration is still denied in its entirety.

**CONCLUSION**

Based on the foregoing, it is hereby

ORDERED and that the petition of Country-Wide Insurance Company is denied in its entirety; and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that Respondent shall serve a copy of this order, along with notice of entry, on all parties within 15 days of entry.

Dated: December 27, 2019



Hon. Carol R. Edmead, J.S.C.

**HON. CAROL R. EDM EAD  
J.S.C.**