

Country-Wide Ins. Co. v de La Rosa
2021 NY Slip Op 32348(U)
November 17, 2021
Supreme Court, New York County
Docket Number: Index No. 653974/2021
Judge: Carol R. Edmead
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL EDMEAD PART 35

Justice

-----X

COUNTRY-WIDE INSURANCE COMPANY,

Petitioner,

INDEX NO. 653974/2021

MOTION DATE 09/13/2021

MOTION SEQ. NO. 001

- v -

JAVIER DE LA ROSA, MIEDORIE SANCHEZ, LUIS
ALVAREZ, PROGRESSIVE CASUALTY INSURANCE
COMPANY, INTEGON NATIONAL INSURANCE
COMPANY, GRUBHUB INC., JOHN DOE, ABC COMPANY
(SAID NAME BEING FICTITIOUS FOR A INSURANCE
COMPANY)

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43

were read on this motion to/for STAY.

Upon the foregoing documents, it is

ORDERED that the application of Petitioner Country-Wide Insurance Company for a temporary stay of the arbitration demanded by Respondent Cesar Romero pending a Framed Issue Hearing (Index No. 653480/2021, "Action One"), is granted; and it is further

ORDERED that the application of Petitioner Country-Wide Insurance Company for a temporary stay of the arbitration demanded by Respondent Javier de La Rosa pending a Framed Issue Hearing (Index No. 653974/2021, "Action Two") is granted; and it is further

ORDERED that Petitioner, Respondent Cesar Romero, Respondent Javier de La Rosa, and Proposed Additional Respondents under both Actions, Miedorie Sanchez, Luis Dennis Alvarez, Progressive Casualty Insurance Company, and Integon National Insurance Company, Grubhub Inc, and "ABC Insurance Company" are directed to appear at a Framed Issue Hearing; and it is further

ORDERED that the overlapping issues raised in both Action One and Two, including, *inter alia*, the identities of the vehicles involved in the subject accident and the coverage responsibilities of the parties, are hereby referred to a Special Referee to Hear and Determine. It is further

ORDERED that these matters are hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov), 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 (which are posted on the website of this court at www.nycourts.gov/suptctmanh at the “References” link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for Petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the “References” link on the court’s website) 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 they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that counsel for Petitioner shall serve a copy of this Order with notice of entry on all parties and the Special Referee Clerk, Room 119M, within twenty (20) days.

MEMORANDUM DECISION

In *Country-Wide Insurance Company v John Doe et al*, Index No. 653840/2021 (“Action One”), Petitioner Country-Wide Insurance Company moves for a permanent or temporary stay of an arbitration proceeding demanded by Respondent Cesar Rosario pending a Framed Issue Hearing. In the alternative, Petitioner seeks a temporary stay of the arbitration pending Respondent Rosario’s compliance with pre-arbitration discovery.

In the related action *Country- Wide Insurance Company v Javier De La Rosa et al*, Index No. 653974/2021 (“Action Two”), Petitioner similarly moves for a permanent or temporary stay of an arbitration proceeding demanded by Respondent Javier De La Rosa pending a Framed Issue Hearing. In the alternative, Petitioner seeks a temporary stay of the arbitration pending Respondent De La Rosa’s compliance with pre-arbitration discovery.

Respondent Rosario has not taken a position with respect to Action One. With respect to Action Two, Respondent De La Rosa opposes the branch of Petitioner's application seeking a permanent stay of arbitration but consents to participating in a Framed Issue Hearing.

Proposed Additional Respondents Miedorie Sanchez, Luis Dennis Alvarez and Progressive Casualty Insurance Company ("Progressive") oppose all branches of relief sought under both actions.

Proposed Additional Respondent Integon National Insurance Company ("Integon") opposes the branch of Petitioner's application seeking a permanent stay of arbitration but consents to participating in a Framed Issue Hearing under both actions.¹

BACKGROUND FACTS

These actions arise out of a car accident that occurred on May 8, 2020, when both Respondents sustained injuries in a collision involving an unidentified motorist that fled the scene (NYSCEF doc No. 5²).

The vehicle that Respondents were traveling in, registered to Respondent Rosario, was insured by Petitioner at the time of the accident. The policy contained a New York Supplemental Uninsured Motorist Endorsement wherein Petitioner agreed to pay certain sums arising out of an accident involving an uninsured automobile for injuries sustained by Respondent Rosario and his passenger(s) (NYSCEF doc No. 3).

The police report of the subject accident describes the adverse vehicle as a 2003 Ford bearing New York State License Plate Number JFS322, registered to Proposed Additional

¹ Although Petitioner requested that both actions be consolidated in its moving papers (Action Two, NYSCEF doc No. 1), Petitioner did not file a motion for consolidation in accordance with CPLR § 602(a). However, the Court is inclined to consolidate both actions for joint resolution before a Special Referee given that both actions involve overlapping questions of law and fact pertaining to the same accident, the same injured parties, and the request for recovery from the same insurance policy.

² Unless specified otherwise, references to the NYSCEF record are under Action One.

Respondent Miedorie Sanchez (NYSCEF doc No. 5). The Department of Motor Vehicles (DMV) report reflects that the 2003 Ford was registered to Ms. Sanchez and insured by Progressive and Integon (NYSCEF doc No. 6).

Contrary to the DMV report, the Insurance Services Offices (ISO) Claims Database identifies NYS license plate number JFS3222 as a 2017 Jeep Grand Cherokee registered to Ms. Sanchez and Proposed Additional Respondent Luis Dennis Alvarez, and insured by Progressive and Integon (NYSCEF doc No. 7). The ISO report matches Respondent's description of the adverse vehicle as a "white four door Jeep" (NYSCEF doc No. 29 at 5).

On April 30, 2021, Respondent Rosario filed a Demand for Arbitration for uninsured motorist benefits (Action One, NYSCEF doc No. 4). Respondent De La Rosa filed his Demand for Arbitration on June 4, 2021 (Action Two, NYSCEF doc No. 4).

On May 26, 2021, Petitioner commenced Action One, seeking a permanent stay of arbitration sought by Respondent Rosario given that the adverse vehicle was insured by Progressive and Integon on the day of the accident. In the alternative, Petitioner seeks a temporary stay of arbitration pending a Framed Issue Hearing on the matter of whether Progressive and Integon's insurance policies were in effect on the day of the accident³.

Should the Court decline to find that a Framed Issue Hearing is needed, Petitioner alternatively seeks a temporary stay of arbitration so that Petitioner may complete pre-arbitration discovery it is entitled to under its policy, including a further examination of Respondent Rosario under oath and submission of authorizations for Respondent Rosario's medical and employment records.

³ Petitioner also requests that Proposed Additional Respondents Grubhub Inc. ("Grubhub") and its insurer, "ABC" Company (name unknown) be added to participate in the Framed Issue Hearing in light of Respondent Rosario's prior testimony that he was working for Grubhub at the time of the accident (NYSCEF doc No. 9). Grubhub has not taken a position with respect to either action.

On June 22, 2021, Petitioner commenced Action Two, seeking the exact same relief with respect to the arbitration demanded by Respondent De La Rosa.

Respondent Rosario did not take a position with respect to Action One. Respondent De La Rosa filed an opposition to Action Two, arguing that Petitioner's application should be denied as there is no evidence that the adverse vehicle involved in the subject accident was properly insured at the time of the occurrence (Action Two, NYSCEF doc No. 15). However, Respondent De La Rosa consents to an evidentiary hearing on the issue of insurance coverage (*id.*).

Integon argues that both actions should be dismissed against it, given that it cancelled coverage for Ms. Sanchez in September 2019 following receipt of a request for cancellation. Integon has attached a Declarations Cancellation indicating that the policy was cancelled September 19, 2019, several months before the subject accident in May 2020 (NYSCEF doc No. 14).

Progressive, Ms. Sanchez, and Mr. Alvarez separately oppose both actions on the grounds that Ms. Sanchez and Mr. Alvarez were not involved in the subject accident. In support, Ms. Sanchez attests that she returned the 2003 Ford model referenced in the DMV Report and added the 2017 Jeep Cherokee referenced in the ISO report to her Progressive policy in March 2020 (NYSCEF doc No. 21). However, Ms. Sanchez states that she was the sole operator of the Jeep Cherokee and neither she nor the vehicle were involved in the subject accident on May 8, 2020 (*id.* at 5).

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). To establish its entitlement to a permanent stay of arbitration, the insurer herein must meet its burden by showing that a hit-and-run accident did not occur. *See Travelers Property & Cas. Co. of America v. Mayen*, 82 AD3d 402 [1st Dept 2011] (a request for a permanent stay of arbitration is properly denied where the insurer fails to meet its burden of proof that a hit run accident did not occur), *citing Matter of Empire Mut. Ins. Co. [Greaney-National Union Fire Ins. Co. of Pittsburgh]*, 156 AD2d 154, 155, [1989]).

The issue of whether the loss sustained by Respondents was caused by an uninsured vehicle is a matter that warrants an evidentiary hearing (*see Hanover Ins. Co. v Lewis*, 57 AD3d 221 [1st Dept 2008]). It is undisputed that “Physical contact [with an uninsured vehicle] is a condition precedent to the arbitration of this uninsured motorist claim” (*Hanover Ins. Co. v Lewis*, 57 AD3d 221, 868 NYS2d 640 [1st Dept 2008] *citing Matter of Empire Mut. Ins. Co. [Zelin]*, 120 AD2d 365, 502 NYS2d 20 [1986]). Thus, an issue of fact regarding whether the adverse vehicle was uninsured at the time of the accident normally warrants a hearing before the matter can proceed to arbitration.

Here, a Framed Issue Hearing is a necessary precondition to the arbitrations sought by both Respondents, as there are numerous outstanding questions of fact regarding the circumstances of the subject accident. It is unclear at this juncture whether the vehicle involved in the subject accident was one of the vehicles listed in the DMV and ISO Reports registered to Ms. Sanchez, and whether any insurance policies were in place for the vehicle in question on the day of the accident. These factual issues must all be adjudicated before Respondents can proceed to arbitration. Given the overlapping questions of fact herein, the issues raised in both Actions can be addressed by one Special Referee in a single Framed Issue Hearing.

Progressive argues it has established it did not insure the adverse vehicle involved in the accident, and therefore “there is no threshold issue of fact” requiring a hearing (NYSCEF doc No. 21 at 3). However, Petitioner has made a prima facie case of showing that the adverse vehicle may have been covered by Progressive by introducing the DMV and ISO Report. Although as discussed, the DMV and ISO reports list different vehicles, a 2003 Ford and a 2017 Jeep Cherokee, both reports identify the respective vehicle as registered by Ms. Sanchez and insured by Progressive and Integon, and thus raise a triable issue regarding whether the policy was in effect the day of the accident (*See State Wide Insurance Co. v. Libeccci*, 104 A.D.2d 893 [1984] [“Once a prima facie case is made out, normally by the submission of a DMV form or similar document, the burden shifts to the offending vehicle's purported insurer (or where the insurer is not made a party, the claimant) to prove that the vehicle in question was never insured or that the insurance had been canceled”] [internal citations omitted]).

While Integon has introduced a letter reflecting that it canceled coverage, such letters alone are insufficient to demonstrate proof of policy cancellation (*See Electric Insurance Co. v Woods*, 101 AD2d 840 [2nd Dept 1984] [“The only proof submitted as to noncoverage consists of

a letter from a carrier stating that the policy was canceled. This does not constitute sufficient proof of cancellation. Therefore, the matter must be remitted to the Supreme Court, Suffolk County, for a hearing on that issue”]). Ms. Sanchez’s testimony that no vehicle owned by her or Mr. Alvarez was involved in the accident is also contradicted by Petitioner’s documentary evidence, including the police report which lists the adverse vehicle as registered in her name (NYSCEF doc No. 5).

In light of the conflicting evidence presented, Petitioner is entitled to a temporary stay of arbitration pending a Framed Issue Hearing on the matter of whether Respondents’ alleged losses were caused by an automobile registered to and insured by Proposed Additional Respondents, notwithstanding the denials of involvement by Proposed Additional Respondents.

Outstanding Pre-Arbitration Discovery

Regarding Petitioner’s contentions that both Respondents have not yet complied with necessary conditions precedent to the arbitration, it should be noted that information disclosures can still be conducted prior to arbitration hearings, even in the absence of a permanent stay, if such disclosure is warranted by the circumstances (*Vandusen*, 22 Misc. 3d 1128[A]). If further disclosures and an examination under oath and medical examination are required prior to arbitration under Petitioner’s policy, Respondents should of course comply and cooperate. The Court, however, will not further delay the arbitrations demanded beyond the time necessitated for the Framed Issue Hearing.

CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the application of Petitioner Country-Wide Insurance Company for a temporary stay of the arbitration demanded by Respondent Cesar Romero pending a Framed Issue Hearing (Index No. 653480/2021, “Action One”), is granted, and it is further

ORDERED that the application of Petitioner Country-Wide Insurance Company for a temporary stay of the arbitration demanded by Respondent Javier de La Rosa pending a Framed Issue Hearing (Index No. 653974/2021, "Action Two") is granted; and it is further

ORDERED that Petitioner, Respondent Cesar Romero, Respondent Javier de La Rosa, and Proposed Additional Respondents under both Actions, Miedorie Sanchez, Luis Dennis Alvarez, Progressive Casualty Insurance Company, and Integon National Insurance Company, Grubhub Inc, and "ABC Insurance Company" are directed to appear at a Framed Issue Hearing; and it is further

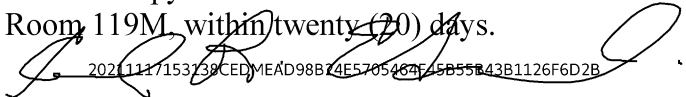
ORDERED that the overlapping issues raised in both Action One and Two, including, *inter alia*, the identities of the vehicles involved in the subject accident and the coverage responsibilities of the parties, are hereby referred to a Special Referee to Hear and Determine. It is further

ORDERED that these matters are hereby referred to the Special Referee Clerk (Room 119, 646-386-3028 or spref@nycourts.gov), 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 (which are posted on the website of this court at www.nycourts.gov/supctmanh at the "References" link), shall assign this matter at the initial appearance to an available JHO/Special Referee to hear and determine as specified above; and it is further

ORDERED that counsel shall immediately consult one another and counsel for Petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or e-mail an Information Sheet (accessible at the "References" link on the court's website) 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 they seek to present, and shall be ready to proceed with the hearing, on the date fixed by the Special Referee Clerk for the initial appearance in the Special Referees Part, subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that counsel for Petitioner shall serve a copy of this Order with notice of entry on all parties and the Special Referee Clerk, Room 119M, within twenty (20) days.


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<u>11/17/2021</u> DATE					<u>CAROL EDMEAD, J.S.C.</u>
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/>	<input checked="" type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
				<input checked="" type="checkbox"/>	REFERENCE