

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JAIME A. RIOS
Justice

IA PART 8

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Petitioner,

- against -

SHARON SOOKRAM-STEVENSON,
Respondent,

X

X

Index
Number: 26406/09

Motion
Date: November 12, 2009

Sequence
Number: 1

The following papers numbered 1 to 5 were read on this petition to stay arbitration and other related relief.

Papers
Numbered

Notice of Petition-Petition-Affidavits-Exhibits-Opposition-Reply... 1-5

On October 7, 2008, respondent was involved in an accident with an under insured vehicle. As a result, respondent made an uninsured/underinsured claim on petitioner State Farm Insurance Company, with whom she has an insurance policy. On or about November 12, 2008, petitioner denied UM/SUM coverage, stating that since the adverse vehicle was insured by GEICO on the date of the accident, the uninsured claim must be denied. Petitioner also stated that there would be no reimbursement under the SUM claim since the limits of the GEICO policy were \$25,000/\$50,000 and the SUM policy limits were also \$25,000/\$50,000. On or about June 22, 2009, GEICO tendered the full limits of the policy in complete settlement for three personal injury claims. Andrew Sookram received \$25,000.00, respondent Sharon Sookram-Stevens received \$8,333.34 and Randy Baruch received \$16,666.66.

On or about September 11, 2009 respondent made a demand upon petitioner for SUM arbitration in the amount of \$25,000.00. By petition dated October 1, 2009, petitioner seeks to stay the arbitration demanded on the grounds that respondent has not complied with certain discovery. Petitioner also states that the demand should be for \$16,666.66, which is \$25,000.00 less the \$8,333.34 she received from GEICO.

In opposition, respondent states that petitioner waived its right to discovery when it denied coverage in November of 2008.

Petitioner was aware of the potential claims by respondent in October of 2008 and thus had ample time prior to the demand for arbitration within which to seek discovery. Petitioner unjustifiably failed to utilize that opportunity to obtain the discovery now sought. In fact, considering that this case involved a multi-car accident resulting in a fatality, the potential for serious injury should not have escaped the attention of petitioner's claims examiner and its failure to use due diligence then precludes it from seeking discovery now (see New York Cent. Mut. Fire Ins. Co. v Gershovich, 1 AD3d 364 [2d Dept., 2003]; Allstate Ins. Co. v Miles, 280 AD2d 472 [2d Dept., 2001]; Allstate Ins. Co. v Faulk, 250 AD2d 674 [2d Dept., 1998]).

Accordingly, the petition is denied, the proceeding dismissed and the matter shall proceed to arbitration. Pursuant to the SUM coverage provision in the respondent's policy with petitioner, the maximum amount of SUM benefits that may be awarded to respondent by the arbitrator shall be \$16,666.66, as the \$25,000.00 SUM limits of the policy is subject to a set off for the amount respondent recovered from GEICO, to wit, \$8,333.34.

Petitioner is directed to serve a copy of this order on all parties as well as the American Arbitration Association.

Dated: December 16, 2009

J.S.C.