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Decided on May 28, 2008

Supreme Court, Queens County

The Travelers Indemnity Company, Petitioner,
against
Sung Won Lee, Respondent.

4491/08

Jaime A. Rios, J.

Upon the foregoing papers, the Order to Show Cause is resolved as follows.

Pursuant to a demand dated November 12, 2007, Sung Won Lee (Lee) commenced a New York State automobile no-fault insurance law arbitration proceeding before the American Arbitration Association against petitioner (Insurance Law 5106). Lee sought to recover \$19,000 for services rendered on August 20, 2007 by Dr. Stanley Liebowitz.

By Order to Show Cause with a stay of the arbitration, petitioner seeks to stay the No-Fault arbitration demanded by Lee. Petitioner claims that the proceeding is timely since the demand did not contain a statement that the arbitration would proceed absent the commencement of a proceeding to stay arbitration within the twenty (20) day limitations provision of CPLR 7503[c]. Petitioner argues that Lee is barred from proceeding with the arbitration since it has exercised its option and elected the courts as the forum within which to prosecute its claims. By summons and complaint dated January 24, 2006 (Index No. 23761/06), Lee commenced an action against petitioner in Queens County Civil Court seeking, *inter alia*, reimbursement of no-fault benefits paid in the sum of "at least Twenty Five Thousand Dollars". Petitioner served its answer and discovery demands and a motion to dismiss. By order of the Court [*2](Lebedeff, J.) dated October 25, 2007, the motion to dismiss was granted without prejudice on the grounds that the lawsuit was premature as it was filed in 2006, prior to the date of service in August of 2007.

Petitioner argues that the fact that the case was dismissed without prejudice does not mean that plaintiff may now choose the arbitration forum to hear this matter.

In opposition, respondent's attorney states that respondent is not barred from proceeding with the demanded arbitration as there is no court action pending in the subject no-fault dispute. Respondent further states that he did not have the option of filing a demand for arbitration at the time he commenced the action in January of 2006 since the surgery had not yet been performed.

Having decided his course of recovery, Lee cannot flit between forums for the resolution of issues or items of damages arising from the same injury (see *Roggio v Nationwide Mut. Ins. Co.*, 106 AD2d 3 [3d Dept., 1985]; see also *Gibeault v Home Ins. Co.*, 221 AD2d 826 [3d Dept., 1995]). To hold otherwise would create an intolerable drain on our resources for dispute resolution, senselessly prolonging controversies and inviting inconsistent adjudication (see *A.B. Medical Services PLLC v. New York Cent. Mut. Fire Ins. Co.*, 2006 WL 901211 [Kings Cty Civ Ct, 2006]; *Advanced Medical Care, PLLC ex rel. Kabelsky v Travelers Property Cas.*, 6 Misc 3d 1040[A] [NY City Civ Ct,2005]).

Accordingly, the Order to Show Cause is granted and the arbitration is hereby permanently stayed.

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

Dated: May 28, 2008

J.S.C.