

Short Form Order and Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JAIME A. RIOS IA PART 8
Justice

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STATE FARM MUTUAL AUTOMOBILE		Number <u>1144/04</u>
INSURANCE COMPANY a/s/o ASHLEY		
SUNDOWN, _____		Motion
		Date <u>April 28, 2004</u>
_____ Petitioner,		
- against -		Motion
		Cal. Number <u>42</u>
LUMBERMANS MUTUAL CASUALTY CO.,		
Respondent,		
	X	

The following papers numbered 1 to 6 were read on this petition to vacate an arbitration award.

	<u>Papers Numbered</u>
Notice of Petition-Petition-Affidavits-Exhibits	1-2
Answering Affidavits-Exhibits	3-4
Reply Affidavits	5-6

Upon the foregoing papers the petition is decided as follows:

An automobile insured by Petitioner was involved in an accident with an automobile insured by Respondent. As a result, Petitioner's vehicle struck and injured a pedestrian. Petitioner paid insurance benefits to the pedestrian and then brought an arbitration proceeding against Respondent for loss transfer. The arbitrator held that Petitioner was solely responsible for payment to the pedestrian, since Petitioner's vehicle caused the injury.

Petitioner brought the instant petition seeking to vacate and remand the matter before a new arbitrator, asserting the arbitrator's decision was arbitrary, capricious and wrong as a matter of law. Petitioner asserts that, regardless of fault, insurers in this situation must share payment of no fault benefits.

Relevant to the issue, New York law states that "[a]ny ... disputes [regarding payments between insurers for no fault benefits] shall be resolved in accordance with the arbitration procedures established pursuant to section 5505 of the Insurance Law[.]" (11 NYCRR § 65-3.12(b)). Respondent correctly alleges that settlement and sharing of no fault benefits between insurers is allowed "only if at least one of the motor vehicles involved [in the accident] is a motor vehicle weighing more than six thousand five hundred pounds unloaded or is a motor vehicle used principally for the transportation of persons or property for hire." (N.Y. Insurance Law § 5105(a)) Since Petitioner does not allege that its insured was driving a vehicle weighing over 6,500 pounds unloaded or a livery vehicle, it follows that loss transfer is not applicable in the instant action.

As this controversy between insurers is resolved by mandatory (as opposed to voluntary) arbitration, it is well-settled that the determination of an arbitrator will be upheld absent a finding that it was arbitrary and capricious. (see, Matter of Gual v. Commercial Union Ins. Co., 268 A.D. 2d 816, 817 [3d Dept 2000]; Matter of Motor Vehicle Acc. Indem. Corp. v. Aetna Cas. & Sur. Co., 89 N.Y. 2d 214, 223 [1996]; Matter of Kolesnik v. State Farm Mut. Ins. Co., 266 A.D. 2d 630, 631 [3d Dept 1999]). This standard of review considers whether the arbitrator has exceeded the scope of their power: "whether the award is supported by evidence or other basis in reason, as may be appropriate, and appearing in the record." (Matter of Travelers Ins. Co. v. Job, 239 A.D. 289, 291 [1st Dept., 1997]).

Exhibit A of Petitioner's papers include Respondent's Contentions Sheet, submitted to the arbitrator, which clearly indicates that the action does not qualify for loss transfer since Petitioner's insured's vehicle was not over 6,500 pounds or used as a livery vehicle, and references Insurance Law Section 5105. It is clear also that the arbitrator had sufficient evidence in the record to make a reasoned determination that Petitioner was not entitled to demand Respondent share no fault benefits. Accordingly, it is Ordered and Adjudged that the petition is denied.

Dated: July 16, 2004

J.S.C.