

<b>Matter of Government Empls. Ins. Co. v Coppolino</b>
2008 NY Slip Op 31213(U)
April 15, 2008
Supreme Court, Nassau County
Docket Number: 1740-08/
Judge: Daniel R. Palmieri
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**SHORT FORM ORDER**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

**Present:**

**HON. DANIEL PALMIERI  
Acting Justice Supreme Court**

-----X  
**IN THE MATTER OF THE APPLICATION OF  
GOVERNMENT EMPLOYEES INSURANCE  
COMPANY to Stay Arbitration,**

**TRIAL TERM PART: 48**

**Petitioner,**

**INDEX NO.: 1740/08**

**-against-**

**MOTION DATE: 3-19-08**

**SUBMIT DATE: 4-8-08**

**SEQ. NUMBER - 001 &  
002**

**PAUL E. COPPOLINO,**

**Respondent,**

**STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, CORNERSTONE  
BUILDING and HARTFORD INSURANCE  
COMPANY OF MIDWEST,**

**Proposed Additional Respondent.**  
-----X

**The following papers have been read on this motion:**

- Notice of Motion, dated 1-28-08.....1**
- Notice of Cross Motion, dated 2-27-08.....2**
- Affirmation in Opposition, dated 4-4-08.....3**

Petitioner's application to stay arbitration is granted temporarily pending a hearing to resolve whether any of the vehicles involved in the accident was "uninsured" and whether

resort must first be had to the policies of any of the vehicles involved in the accident before a claim for uninsured benefits may be made against the policy issued by petitioner.

Should the respondent prevail and a determination be made that uninsured motorist arbitration should go forward, and a permanent stay thereof be denied, a temporary stay is granted to abide the discovery sought by the petitioner, which discovery is unopposed and thus shall proceed forthwith.

Respondent Coppolino, the driver of an automobile owned by proposed additional respondent Cornerstone was in an auto accident with a Dodge vehicle owned by one Kent. Motor Vehicle Department records show the Kent vehicle to have been insured by proposed additional respondent Hartford.

Respondent made a demand for arbitration for uninsured motorist benefits upon petitioner under his own policy of insurance rather than under the policy of the vehicle which he was driving, which according to Motor Vehicle Department records was insured by additional respondent State Farm on the date of the accident, February 16, 2006. The code for State Farm is the Code noted on the police accident report issued in connection with accident.

A proceeding is presently pending in this Court to stay arbitration of a claim by one LaRocca a passenger in the respondent's Cornerstone vehicle. That proceeding was initiated by State Farm to determine coverage on the vehicles involved in the accident and all three of GEICO, Hartford and State Farm (as the Petitioner) are parties and/or proposed additional parties in that proceeding.

The determination of which insurers covering the vehicles in the accident will affect whether the arbitration should go forward, the priorities and the amounts of coverage. In this proceeding, petitioner alleges that even if the Kent vehicle was uninsured resort must first be had to the State Farm policy issued for the vehicle driven by respondent before respondent is permitted to claim against his own policy. State Farm has cross moved without opposition from any of the affected insurance carriers and only token opposition by respondent to join this proceeding with the proceeding initiated by State Farm in which a hearing is presently pending.

Inasmuch as common issues of law and fact exist in both proceedings and in order to afford convenience to parties, witnesses and attorneys while avoiding inconsistent results the Court agrees that it is appropriate to join this proceeding with the State Farm proceeding for joint trial.

Petitioner has established a *prima facie* case by way of producing a police report pertaining to the accident which lists the Kent vehicle as insured by Hartford and the petitioner's vehicle as insured by State Farm. As there is a "presumption of coverage" arising from a police report's insurance code designation on a police report (*Centennial Insurance Company v. Capehart*, 220 AD2d 499 [2d Dept. 1995]), petitioner has met its initial burden of presenting some evidence to establish that the allegedly offending vehicle was insured on the date of the accident. Having done so, the burden then shifts to respondent to show that no such policy was in effect or applicable at the time of the occurrence. *Matter of State Farm Mutual Automobile Insurance Company v. Kanter*, 217 AD2d 633 (2d Dept.

1995); *Matter of Wausau Insurance Company v. Predestin*, 11 AD2d 900, (2d Dept. 1985).

In addition, petitioner has submitted pertinent portions of its policy dealing with priorities of coverage.

Petitioner is directed to file a Note of Issue, together with the required fee, at the office of the County Clerk of Nassau County forthwith upon receipt of a copy of this order. Thereafter, the proceeding shall be added the CCP calendar for **April 24, 2008**, at 9:30 a.m., or such other date as Action 1 is on said calendar.

A copy of this order shall be served on the Calendar Clerk and accompany the Note of Issue when filed. The failure to file a Note of Issue or to appear as directed may be deemed an abandonment of the claim giving rise to the hearing.

This directive with respect to a hearing is subject to the right of the Justice presiding in CCP II to refer the matter to a Justice, Judicial Hearing Officer or a Court Attorney Referee as he or she deems appropriate.

As noted above, the attorney for the proposed additional respondent State Farm moves for an Order pursuant to CPLR §602 consolidating this proceeding with its proceeding. The motion is granted and the proceedings are joined for trial.

It is clear from a reading of the moving papers that these actions arise out of the same accident which occurred on February 16, 2006, therefore it is

**NOW ORDERED**, that the cross motion by the attorney for State Farm seeking joinder of both proceedings is granted.

**ORDERED**, that all parties shall serve upon any party so demanding copies of disclosure documents heretofore obtained in the other action and it is further,

**ORDERED**, that the joined proceedings shall bear the caption and index numbers as

follows:

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NASSAU**

-----X  
**In the matter of the Application of STATE FARM  
MUTUAL AUTOMOBILE INSURANCE  
COMPANY,**

**Action No. 1**

**Petitioners**

**-against-**

**INDEX NO. 006336/07**

**JOHN LA ROCCA, GEICO INDEMNITY  
COMPANY, HARTFORD INSURANCE  
COMPANY OF MIDWEST and FRANCES KENT,**

**Respondents**

-----X  
**IN THE MATTER OF THE APPLICATION OF  
GOVERNMENT EMPLOYEES INSURANCE  
COMPANY to Stay Arbitration,**

**Action No. 2**

**Petitioner,**

**INDEX NO.: 1740/08**

**-against-**

**PAUL E. COPPOLINO,**

**Respondent,**

**STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY, CORNERSTONE  
BUILDING and HARTFORD INSURANCE  
COMPANY OF MIDWEST,**

**Proposed Additional Respondent.**

-----X

**ORDERED**, that all matters of trial practice, including the right to open and close, are reserved to the Justice presiding at the trial, and it is further,

**ORDERED**, that all papers shall reflect the joined status of these actions, and it is further,

**ORDERED**, that the Movant shall immediately serve a copy of this Order upon all parties to both proceedings and upon the Clerk of the Supreme Court of Nassau County, and upon receipt of this Order, the Nassau County Clerk is directed to join the files, and it is further,

**ORDERED**, that all parties shall report to the Calendar Control Part on April 24, 2008, located at 100 Supreme Court Drive, Mineola, NY, 11501, First Floor, that being the date Action 1 is scheduled for trial.

Petitioner is also directed to serve a copy of this order upon the respondent pursuant to CPLR §2103. A supplemental notice of petition pursuant to CPLR §1003 shall be served upon the proposed additional respondents, together with a copy of this order and all the papers upon which this order is based, in a manner prescribed in CPLR Article 3. *See, American Transit Insurance Company v. Carillo*, 307 AD2d 220 (1<sup>st</sup> Dept. 2003) and *New York Central Mutual Insurance Company v. Johnson*, 260 AD 2d 638 (2d Dept. 1999).

That branch of the petition seeking various items of pre-arbitration disclosure is granted. Such disclosure shall proceed with dispatch should the petitioner be found not entitled to a permanent stay of arbitration. *State Farm Insurance Company v. McManus*, 249 AD2d 311 (2d Dept. 1998).

Pursuant to Court policy, Action No. 2 shall be transferred from Acting Justice Palmieri's Part to the Part of Justice Anthony L. Parga as Action 1 was commenced prior to Action No. 2. The Calendar Clerk is authorized and directed to take the appropriate action to make the transfer.

This shall constitute the Decision and Order of this Court.

ENTER

DATED: April 15, 2008

  
HON. DANIEL PALMIERI  
Acting Supreme Court Justice

**TO: Darienzo & Lauzon  
Attorneys for Petitioner  
875 Merrick Avenue  
Westbury, NY 11590**

**Steven Cohn, P.C.  
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Paul E. Coppolino  
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Hicksville, NY 11801**

**Martin, Fallon & Mulle  
By: Richard C. Mulle  
Attorneys for Proposed Additional Resp. State Farm  
100 East Carver Street  
Huntington, NY 1174**

**ENTERED**

APR 21 2008

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**

**Hartford Insurance Company of Midwest  
Hartford Plaza  
Hartford, CT 06115**

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