

**Matter of American Tr. Ins. Co. v
Molina**

2009 NY Slip Op 30896(U)

April 15, 2009

Supreme Court, New York County

Docket Number: 102018/09

Judge: Joan B. Lobis

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Joan B. Lohis

PART 6

Index Number: 102018/2009 *Motion*

AMERICAN TRANSIT INS.

INDEX NO. _____

vs

MOLINA, LORENZO

MOTION DATE 4/10/09

Sequence Number : 001

MOTION SEQ. NO. _____

COMPEL OR STAY ARBITRATION

MOTION CAL. NO. _____

The following papers, numbered _____

his motion to/for _____

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

PAPERS NUMBERED

Answering Affidavits -- Exhibits _____

1-8

Replying Affidavits _____

9

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

**MOTION DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION AND ORDER**

*His judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
11B)*

Dated: 4/15/09

JBL
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6

-----X
In the Matter of the Arbitration Attempted to be had
between AMERICAN TRANSIT INSURANCE
COMPANY,

Petitioner,

Index No. 102018/09

-against-

Decision, Order, and Judgment

LORENZO MOLINA,

Respondent,

BONIFACIO PEREZ and COUNTRY-WIDE
INSURANCE COMPANY,

Proposed Additional Respondents.

-----X
JOAN B. LOBIS, J.S.C.:

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel or authorized representative must
appear in person at the Judgment Clerk's Desk (Room
'1B)

Petitioner, American Transit Insurance Company ("American"), brings this petition seeking an order: (1) permanently staying arbitration; (2) temporarily staying arbitration; (3) joining Bonifacio Perez and Country-Wide Insurance Company ("Country-Wide") as respondents; and, (4) ordering the claimant, Lorenzo Molina, to comply with the underinsured preliminary requirements of a preliminary hearing on the issue of insurance coverage. In the alternative, petitioner asks that, if this court finds that arbitration is necessary, claimant be ordered to submit to an examination under oath and to an independent medical examination. Respondent Molina does not oppose the petition. Proposed additional respondent Country-Wide opposes the petition on the ground that its investigation is still pending.

Molina served a demand for arbitration on January 26, 2009, based on injuries he allegedly sustained as the driver of a vehicle ("Vehicle 1"). According to the police report, on

August 2, 2008, respondent was injured in Manhattan when the vehicle he was driving—Vehicle 1—was struck by a second vehicle (“Vehicle 2”). On the police report, Vehicle 1 was identified as a 2001 Lincoln and was reported as registered to Orlando D. Torres, the insured. Vehicle 2, which left the scene of the accident, was identified as a 2000 Dodge, with a New York license plate number EJU2563, and was reportedly registered to Bonifacio Perez.

Petitioner issued policy number BU A003333 to Orlando D. Torres. The policy contains a New York Accident Indemnification Endorsement, by which American agrees to pay certain sums for injury sustained by said insured, passengers in the insured's vehicle, or the insured's spouse or relatives residing at the same location as insured on the loss date, caused by an accident arising out of the ownership, maintenance, or use of a Supplementary Uninsured Automobile.

American argues that Vehicle 2 was insured by Country-Wide at the time of the accident. Annexed to petitioner's papers in support of this claim is a document that petitioner refers to as a “DMV abstract”. The one-page document is a computer printout, purportedly based on a search of license plate number EJU2563. Two records “fit” the search: record 1 is for a 2000 Dodge, vehicle number 2B4GP24RXYR645364, registered to Bonifacio Perez, and record 2 is for a 1998 Chevrolet, vehicle number 1GBFG15RXW1109818, registered to Bonifacio Perez. Further down the document is information related to an “insurance activity” indicating that, on the date of the search, which was August 21, 2008, vehicle number 2B4GP24RXYR645364, a 2000 Dodge, was insured by Country-Wide Ins. Co., effective July 21, 2008.

Petitioner has the burden of showing "the existence of sufficient evidentiary facts to establish a genuine preliminary issue" as to whether or not the vehicle was insured. Empire Mut. Ins. Co. v. Zelin, 120 A.D.2d 365, 366 (1st Dep't 1986) (citation omitted). Where the "insurance company presents some evidence that the offending vehicle is insured," arbitration should be stayed and at least an evidentiary hearing ordered. Aetna Ins. Co. v. Logue, 68 Misc.2d 841, 846 (Sup. Ct. N.Y. Co. 1972). In this case, petitioner has presented evidence that raises a genuine issue as to whether Vehicle 2 was insured on the date of the accident, August 2, 2008.

Respondent defaulted on the petition. Proposed respondent Country-Wide's arguments in opposition to the petition are unavailing. Country-Wide asserts by attorney's affirmation that it objects to the petition to stay arbitration, due to its pending investigation into the alleged accident and coverage of the vehicle. Country-Wide states that it has retained an investigator to investigate the facts of the case as to allegations that the driver of Country-Wide's insured vehicle left the scene of the alleged accident. Country-Wide presents no evidence that it did not insure Vehicle 2 on the date of the accident.

Accordingly, it is

ORDERED that the application to stay arbitration is granted to the extent that a hearing is directed on the preliminary issue of whether Vehicle 2 had insurance coverage at the time of the accident and the arbitration is stayed pending such trial; and it is further

ORDERED that the Trial Support Clerk is directed to assign this matter to an appropriate part for the hearing upon receipt of a copy of this order with notice of entry, the filing of note of issue and a statement of readiness, and the payment of appropriate fees, if any; and it is further

ORDERED that Bonifacio Perez and Country-Wide Insurance Company shall be added as party respondents upon service upon said party respondents of a copy of this order with notice of entry, together with a supplemental notice of petition and supplemental petition pursuant to C.P.L.R. § 1003, and copies of all papers previously served in the proceeding; and it is further

ORDERED that the caption of this proceeding is amended to reflect the inclusion of additional party respondents Bonifacio Perez and Country-Wide Insurance Company, and the Clerk of this Court and the Trial Support Clerk shall, upon service on them of a copy of this order with notice of entry, mark their records to reflect the amendment.

This constitutes the decision, order, and judgment of the court.

Dated: April 15, 2009



JOAN B. LOBIS, J.S.C.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 11B)