

**Matter of American Home Assur. v New York
Cent. Mut. Fire Ins. Co.**

2010 NY Slip Op 30280(U)

February 3, 2010

Supreme Court, New York County

Docket Number: 109459/09

Judge: Joan A. Madden

Republished from New York State Unified Court
System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for
any additional information on this case.

This opinion is uncorrected and not selected for official
publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
HON. JOAN A. MADDEN

PART 11

Index Number : 109459/2009

AMERICAN HOME ASSURANCE

VS.

NEW YORK CENTRAL MUTUAL FIRE INS.

SEQUENCE NUMBER : # 001

STAY PROCEEDING

Justice

INDEX NO.

109459-09

MOTION DATE

#007

MOTION SEQ. NO.

MOTION CAL. NO.

were read on this motion to/for _____

PAPERS NUMBERED

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

Answering Affidavits — Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, It is ordered that this motion

Article 75 petition is granted in accordance with the annexed decision, order and judgment.

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 141B).

Dated: February 3, 2010

J.S.C.

Check one: FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST

REFERENCE

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 11

-----X
In the Matter of the Application of

Index No. 109459/09

AMERICAN HOME ASSURANCE, named
in Respondent's Application for Arbitration
as AIG Insurance Company,
Petitioner,

-against-

NEW YORK CENTRAL MUTUAL FIRE
INSURANCE COMPANY,

Respondent

UNFILED JUDGMENT
This judgment has not been filed with the County Clerk
and notice of entry of judgment has not been given. To
obtain entry, counsel for both sides must
appear in person at the Judgment Clerk's Desk (Room
1418).

-----X
JOAN A. MADDEN, J.:

In this special proceeding, petitioner American Home Assurance (American Home) seeks an order, pursuant to CPLR 7503, permanently staying the application for arbitration, dated June 9, 2009 (Arbitration Application), filed by respondent New York Central Mutual Fire Insurance Company (New York Central). New York Central opposes the motion. For the reasons discussed below, the application is granted and the arbitration is stayed.

This dispute arises out of a motor vehicle accident that occurred on January 13, 2006, when the claimant, Lawrence Cochran, was a pedestrian struck by a vehicle owned and operated by Carolyn Strong. It is alleged that Cochran's accident occurred while he was in the scope of his employment with Beckwith Construction Company (Beckwith). Cochran filed a claim for, and received, workers' compensation benefits from American Home, Beckwith's workers' compensation insurance carrier.¹ He also filed a claim for no-fault benefits with New York

¹ American Home initially disputed Cochran's workers' compensation claim, but the Workers' Compensation Board determined that the claim was valid, and American Home made payments to or on behalf of the claimant, totaling \$24,684.55.

Central, which insured the vehicle owned by Cochran at the time of the accident. In addition to workers' compensation benefits and no-fault benefits, Cochran also submitted bills and/or requests for payment for lost wages to the two carriers and was paid by both. It is therefore possible that duplicative payments were made by American Home and/or New York Central.

In the Arbitration Application, New York Central seeks reimbursement on claims it paid to, or on behalf of, Cochran, from American Home. Among other things, New York Central asserts that there were some duplicative payments made on claims, and that it paid approximately \$45,000 to Cochran and/or to others on his behalf, which should have been paid by American Home, as the workers' compensation carrier.

In support of this proceeding to stay arbitration, American Home contends that the Workers' Compensation Board is the proper forum to determine whether American Home owes any money to New York Central. American Home also advances other arguments, to wit, that: (a) there is no agreement to arbitrate; (b) AIG Insurance Company was improperly named in the Arbitration Application, rather than American Home, which is the actual workers' compensation insurance carrier; and (c) the Arbitration Application is untimely, insofar as it was filed in June 2009, more than three years after the date of the underlying accident, January 13, 2006. With respect to New York Central's claim to recoup alleged duplicate payments, American Home contends that New York Central must seek recovery of any such alleged payments from either Cochran or his medical providers, and not from American Home. New York Central disagrees with each of these contentions.

The primary issue presented here is whether the Workers' Compensation Board, on the one hand, or Arbitration Forums, Inc. on the other hand, is the proper forum to determine

whether American Home owes any money to New York Central.

American Home contends that, pursuant to the applicable rules and laws, including the Workers' Compensation Law (§§ 11, 124 and 142) and the rules issued by the Workers' Compensation Board, the proper and sole method for a party to request resolution of an issue involving a workers' compensation claim is for the party to request a hearing before the Workers' Compensation Board. American Home submits that it is the Workers' Compensation Board's function to determine, among other things, which (if any) of the carriers involved in this matter have paid money; which (if any) are entitled to any reimbursements, and which (if any) are obligated to reimburse the other entities.

In opposition, New York Central asserts that basis exists to stay the arbitration demanded in the Arbitration Application. Specifically, New York Central argues that Insurance Law §5105 (b) is applicable to this controversy, and, pursuant to its terms: "[t]he sole remedy of any insurer or compensation provider to recover" on a loss transfer claim "shall be the submission of the controversy to mandatory arbitration pursuant to the procedures promulgated or approved by [the Superintendent of Insurance]." New York Central further submits that, pursuant to 11 NYCRR § 65-3.12 (b), where there is a dispute, as here, regarding which carrier pays no-fault benefits, the dispute shall be resolved in accordance with the arbitration procedures established pursuant to Insurance Law §5105 and 11 NYCRR§ 65-4 *et seq.* In this regard, 11 NYCRR § 65-4.11 provides that the mandatory arbitration of controversies between insurers set forth in Insurance Law § 5105 applies to insurers, self-insurers and compensation providers. New York Central concludes that, under the above-discussed statute and regulations, workers' compensation carriers, such as American Home, are subject to mandatory arbitration.

[* 5]

The argument presented by New York Central was rejected by the court in *National Union Fire Ins. v Farmers New Century Ins. Co.* (8 Misc 3d 1004 [A], NY Slip Op 50925 [U] [Sup Ct, NY County, March 31, 2005, Yates, J., index No. 101312/04]). In *National Union*, Justice Yates stated:

While the statutory scheme requires mandatory arbitration to resolve all disputes between insurers concerning their responsibility for payment of first-party benefits or between compensation providers, the courts have held that a workers' compensation carrier is *not* bound to arbitrate a claim by a no-fault insurer for money it was obligated to pay during the time that the workers' compensation carrier was contesting the claim.

(*id.* at *4 [*emphasis added*]; see also *American Mut. Ins. Co. v Merchants Ins. Group*, 123 Misc 2d 331 [Sup Ct Onondaga County 1984]).

The court in *National Union*, therefore, determined that Insurance Law § 5105, and the accompanying regulations, are *not* applicable to workers' compensation providers under circumstances analogous to those presented here. It follows, American Home submits, that the issues raised by New York Central in the Arbitration Application must be submitted to, and determined by, the Workers' Compensation Board.

This court finds that an examination of the holding in *National Union* compels the conclusion that the application for a permanent stay of arbitration is warranted in the instant proceeding. New York Central's attempt to distinguish *National Union* from this proceeding is not persuasive.

Thus, the petition for a permanent stay of arbitration is granted in its entirety. In view of this determination, the court need not reach the remaining grounds presented by American Home.

Accordingly, it is hereby

ORDERED AND ADJUDGED that the petition by American Home Assurance for an order permanently staying the application for arbitration, dated June 9, 2009 filed by respondent New York Central Mutual Fire Insurance Company is granted, and said arbitration is hereby permanently stayed; and it is further

ORDERED AND ADJUDGED that petitioner shall serve a copy of this order and judgment with notice of entry on the arbitral tribunal.

DATED: ~~January~~ *February 3, 2010*

ENTER:



J.S.C.