

**Matter of American Mfrs. Mut. Ins. Co. v Belgrave**

2004 NY Slip Op 30389(U)

June 22, 2004

Supreme Court, New York County

Docket Number: 104777/04

Judge: Emily Jane Goodman

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK - I.A.S. Part 17

-----X  
In the Matter of the Arbitration Attempted  
to be had between AMERICAN MANUFACTURERS  
MUTUAL INSURANCE COMPANY

Petitioner,

Index No.: 104777/04

-against-

MAXINE BELGRAVE

Respondent,

-and-

SHAM LAL PAWA and ALLSTATE INSURANCE CO.,

Additional Respondents.

-----X  
**EMILY JANE GOODMAN, J.:**

This application for an order staying arbitration of Respondent's uninsured motorist claim and adding proposed additional Respondents is granted, pending the determination of the issue of (1) whether the alleged offending vehicle was insured at the time of the accident and (2) whether Respondent Maxine Belgrave complied with Insurance Law §5208 and the Supplementary Uninsured/Underinsured Motorists Endorsement Section I (c) (2) (i) issued by Petitioner, by reporting the accident to the police within 24 hours, or, as soon as reasonably possible.

Respondent Maxine Belgrave, a passenger in a vehicle operated by Gregory Burrows, owned by McDonald Burrows and insured by Petitioner, was allegedly injured in an accident on May 16, 1999. The driver of the adverse vehicle allegedly left the scene of the accident. The MV-104 Report of Motor Vehicle Accident, signed by Gregory Burrows, indicates that the license plate number for the

**FILED**

JUN 29 2004

NEW YORK  
COUNTY CLERK'S OFFICE

[\* 2]

adverse vehicle, described as a Maxima, is T525UL. The New York State Department of Motor Vehicles computer records, submitted by Petitioner indicate that a Nissan bearing that license plate is owned by Shamlal Pawa ("PAWA") and insured by Allstate Insurance Co. from 11/25/97 to 11/24/99. The same document also indicates that "Plates were reported stolen on: 5/12/99."

Petitioner claims that the uninsured motorist arbitration should be stayed because the offending vehicle was insured by Allstate Insurance Co., on the date of the accident. Petitioner's attorney claims, without having any first hand knowledge, that it is unlikely that the offending vehicle was stolen because it was located in PAWA's driveway shortly after the accident. Moreover, Petitioner maintains that there is no proof that Allstate Insurance Co. ever timely disclaimed coverage. Additionally, Petitioner contends that the arbitration should be stayed because Respondent Maxine Belgrave violated Insurance Law §5208 and the Supplementary Uninsured/Underinsured Motorists Endorsement Section I (c) (2) (i), by failing to report reporting the accident to the police within 24 hours, or, as soon as reasonably possible. Respondent's Report and Proof of Claim indicates that she reported the accident to the police on May 19, 1999, three days after the accident, which Petitioner argues is untimely. Petitioner also requests that if the Court does not stay arbitration, Respondent should be required to submit to an EBT and IME prior to the hearing, pursuant to the Uninsured Motorist Endorsement of the policy.

In opposition, Respondent maintains that the arbitration

should not be stayed because Allstate Insurance Co. determined in a letter dated April 8, 2004, that "our findings indicate that our insured was not responsible for the occurrence. We must, therefore, respectfully decline to make any payment of this claim." Further, Respondent's attorney contends that Respondent complied with Insurance Law §5208 and the Supplementary Uninsured/Underinsured Motorists Endorsement Section I (c) (2) (i) because Respondent went to the police precinct on the date of the accident and was advised to file the MV104 Form, which she filed with the Commissioner of Motor Vehicles on May 19, 1999.

Petitioner has met its burden to show that the alleged offending vehicle was insured on the date of the accident ( see State Farm Mut. Auto. Ins. Co. v Yeqlinski, 79 AD2d 1029 [2d Dept 1981] [once a prima facie case is made out, normally by submission of a Department of Motor Vehicles FS-25 form or similar document, the burden shifts to the claimant to prove that the vehicle in question was never insured or that the insurance had been cancelled]). However, the same form relied upon by Petitioner to establish its prima facie case, also indicates that plates were reported stolen four days before the accident, creating an issue of fact. Petitioner's attorney's statement, that the Maxima was in PAWA's driveway after the accident, must be disregarded for lack of personal knowledge and, in any event, is not dispositive, particularly because it was "license plates," not a car, that was reported stolen. Contrary to Respondent's contentions, the letter sent by Allstate Insurance Co. to Respondent, regarding its own

[\* 4]

determination that its insured was not responsible for the accident, is also not dispositive. An issue of fact also exists as to whether Respondent complied with Insurance Law §5208 and the Supplementary Uninsured/Underinsured Motorists Endorsement Section I (c) (2) (i). If Respondent went to the police precinct on the date of the accident and orally informed the police of the accident, the Court would be inclined to find that Respondent complied with statutory and contractual conditions (see Country Wide Ins. Co. v Russo, 201 AD2d 368 [1st Dept 1994] [courts have consistently afforded a very liberal interpretation to the notice requirement, accepting police contacts that fall short of a written report]; Canty v MVAIC, 95 AD2d 509 [2d Dept 1983] [oral report to police officer at hospital on the date of the accident could constitute compliance with Insurance Law §5208]). However, Respondent has not submitted her own affidavit and her attorney's affirmation must be disregarded for lack of personal knowledge. An evidentiary hearing is appropriate as it is Petitioner's burden to establish that Respondent failed to comply with the notification provision (see Country Wide Ins. Co. v Russo, 201 AD2d 368, supra). Even assuming the report was not made until three days after the accident, the Court cannot determine that the notification provision was violated as a matter of law. The case Petitioner cites, Matter of Aetna Casualty & Surety Co. v Loy (108 AD2d 709 [1st Dept 1985]), is inapposite because in that case, it was undisputed that no report was ever made to the police. Further, a hearing is appropriate, in the interests of justice, because

Respondent should not be penalized for her attorney's failure to submit her affidavit, a procedural defect.

Petitioner's request for an order requiring Respondent to submit to an EBT and IME prior to any uninsured arbitration hearing, is denied because Petitioner has not disputed Respondent's contention that Petitioner was aware of her claim in 1999. The failure of an insurer to request discovery until after receiving a Demand for Arbitration has resulted in the waiver of its rights to discovery, absent a justifiable excuse (see Matter of Allstate Ins. Co. v Miles, 280 AD2d 472 [2d Dept 2001]; Matter of Interboro Mut. Indem. Ins. Co. v Pardon, 270 AD2d 266 [2d Dept 2000]; Matter of Liberty Mut. Ins. Co. v Almeida, 266 AD2d 547 [2d Dept 1999]; Matter of Allstate Ins. Co. v Faulk, 250 AD2d 674 [2d Dept 1998]). No excuse has been presented.

It is hereby

ORDERED that the issue of (1) whether the alleged offending vehicle was insured at the time of the accident and (2) whether Respondent Maxine Belgrave complied with Insurance Law §5208 and the Supplementary Uninsured/Underinsured Motorists Endorsement Section I (c) (2) (i) issued by Petitioner, by reporting the accident to the police within 24 hours, or, as soon as reasonably possible, is referred to a Special Referee to hear and report; and it is further

ORDERED that Petitioner's request for an order requiring that Respondent submit to an EBT and IME prior to any uninsured arbitration hearing is denied, and it is further

ORDERED that Petitioner shall serve a copy of this Order with notice of entry on the Clerk of the Judicial Support Office (Room 311) within 90 days from the date hereof to arrange a date for the reference to a Special Referee; and it is further

ORDERED that arbitration is stayed until the Court confirms or rejects the report of the Special Referee; and it is further

ORDERED that SHAM LAL PAWA, and ALLSTATE INSURANCE CO., be added as party Respondents, upon Petitioner's service of a copy of this Decision and Order with notice of entry upon each of them, together with copies of all papers previously served in this proceeding, which service shall be made within 30 days from the date hereof, and it is further

ORDERED that the caption of this proceeding is amended to reflect inclusion of SHAM LAL PAWA, and ALLSTATE INSURANCE CO. as Additional Respondents, and, upon Petitioner's service of a copy of this Decision and Order with notice of entry on the Clerk of this Court and the Trial Support Clerk (Room 158), the Clerks shall mark their records to reflect the amendment, and it is further

ORDERED that Petitioner shall serve a copy of this Decision and Order with notice of entry on Respondent and the arbitrator within 30 days from the date hereof.

This constitutes the Decision and Order of the Court.

DATED: June 22, 2004

ENTER:

**FILED**  
JUN 29 2004  
NEW YORK  
COUNTY CLERK'S OFFICE  
J.S.C.  
**EMILY JANE GOODMAN**