

**Matter of Government Empls. Ins. Co. v
Jordan**

2007 NY Slip Op 31143(U)

May 3, 2007

Supreme Court, New York County

Docket Number: 0102310/2007

Judge: Eileen A. Rakower

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY
EILEEN A. RAKOWER

PRESENT: _____ J.S.C.

PART 5

Index Number : 102310/2007

GOVERNMENT EMPLOYEES INSURANCE

INDEX NO. _____

vs

JORDAN, RAYMOND

MOTION DATE _____

Sequence Number : 001

MOTION SEQ. NO. _____

STAY PROCEEDINGS

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

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

PAPERS NUMBERED

1

Answering Affidavits — Exhibits _____

2

Replying Affidavits _____

3

Cross-Motion: Yes No


Upon the foregoing papers, it is ordered that this motion

FILED
MAY 09 2007

COUNTY CLERK'S OFFICE
NEW YORK

DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER

Dated: 5/3/07



EILEEN A. RAKOWER 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: PART 5

-----X
In the Matter of the Application of
GOVERNMENT EMPLOYEES INSURANCE
COMPANY

Petitioner,

Index No.
102410/07

- against -

Decision and Order

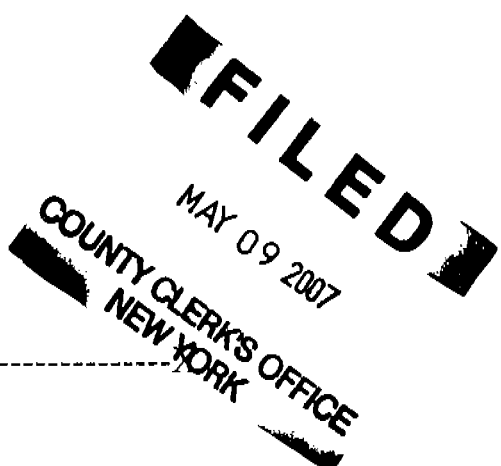
RAYMOND JORDAN,

Respondent

-and-

AUTOONE INSURANCE COMPANY, JAMES
M. DANDRIDGE AND KEVIN N. PETRIE,

Proposed Additional Respondents.



HON. EILEEN A. RAKOWER

Respondent, Raymond Jordan (“Jordan”) makes a demand for arbitration based on injuries he sustained in an accident with an allegedly “uninsured” motorist on August 26, 2006. Petitioner, Government Employees Insurance Company (“Geico”) brings this petition to stay arbitration pursuant to CPLR 7503(c) permanently, or in the alternative, temporarily staying arbitration and ordering a hearing on the issue of whether the other motorist, James Dandridge (“Dandridge”) was actually uninsured; joining Autoone Insurance Company and James Dandridge as well as Kevin N. Petrie, the operator of the vehicle at the time of the accident, as respondents; an order directing respondent Jordan to produce a copy of all relevant medical authorizations and to submit to an Independent Medical Examination. Respondent Jordan opposes the motion.

Geico, in support of its petition, first argues respondent must submit sufficient proof that Dandridge’s vehicle was uninsured as a condition precedent to arbitration.

Geico argues that Jordan has failed to do this and submits a police report which shows the number "684" marked under the box used for "Ins. Code." Geico contends that this code number is assigned to Autoone Insurance Company. Geico next argues that under its policy, Jordan is required to furnish medical records and authorizations and to submit to an Independent Medical Examination before arbitration can go forward.

Respondent Jordan, in opposition, argues that Dandridge was not insured by Autoone Insurance Company on the date of the accident. Jordan submits a letter, dated September 18, 2006, from Autoone Insurance Company stating "our investigation has revealed that policy A29-00031731 had no Bodily Injury coverage in effect at the time of loss. We, therefore, cannot afford coverage for your claim." Regarding the discovery request made by Geico, Jordan claims in its papers that the authorizations are attached as "Exhibit 2." However, Jordan only includes "Exhibit 1" in his papers and the authorizations are not attached.

The court in *Electric Insurance Co. v. Woods*, 101 A.D.2d 840 (2nd Dept. 1984), found that a letter from an insurance carrier stating that a policy was cancelled or that it cannot locate a policy does not constitute sufficient proof of cancellation. *Id.* At 840.

Geico's policy states, in relevant part:

Medical Reports: The insured shall submit to physical examinations by physicians we select when and as often as we may reasonably require. The insured...shall upon each request from us authorize us to obtain relevant medical reports and copies of relevant records. (Petitioner's Ex. "C" Page 13 Section (3))

Wherefore it is hereby

ORDERED that Government Employees Insurance Company's petition to stay arbitration is granted to the extent that a trial is directed on the preliminary issue as to coverage, and the arbitration is stayed pending such trial; and it is further

ORDERED that the Clerk of the Trial Support Office is directed to assign this matter to an appropriate part for trial upon receipt of a copy of this order with notice

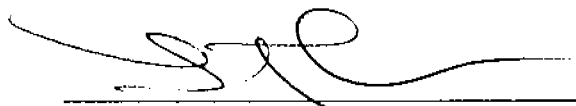
of entry, the filing of a note of issue and a statement of readiness, and the payment of appropriate fees, if any, and it is further

ORDERED that a copy of this order with notice of entry be served upon the attorneys for the respondent and the arbitrator within 20 days of entry hereof, and it is further

ORDERED that Autoone Insurance Company, James M. Dandridge and Kevin N. Petrie shall be added as party respondents upon service upon said party respondents of a copy of this order with notice of entry together with copies of all papers previously served in the proceeding; and it is further

ORDERED that the caption of this proceeding is amended to reflect inclusion of said additional party respondents and the Clerk of the Court and the Clerk of the Trial Support Office (Room 158), upon service on each of them of a copy of this order with notice of entry, shall mark their records to reflect the amendment.

DATED: May 3, 2007



EILEEN A. RAKOWER, J.S.C

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MAY 09 2007
COUNTY CLERK'S OFFICE
NEW YORK