

**Matter of United Servs. Auto. Assn.,
Co. v Johnson**

2007 NY Slip Op 33070(U)

September 19, 2007

Supreme Court, New York County

Docket Number: 0107606/2007

Judge: Emily Jane Goodman

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

PRESENT.

PART 17

Justice

Index Number : 107606/2007

UNITED SERVICES AUTOMOBILE

VS.

JOHNSON, KARL W.

SEQUENCE NUMBER : # 001

PERMANENTLY STAYING ARBITRATION

INDEX NO. 107606-07

MOTION DATE

MOTION SEQ. NO. #001

MOTION CAL. NO.

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

is decided

as attached.

FILED
OCT - 1 2007
NEW YORK
COUNTY CLERK'S OFFICE

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

Dated: 9/19/07

[Signature]
EMILY JANE GOODMAN S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION
Check if appropriate: DO NOT POST

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

-----X
In the Matter of the Application for an
Order Staying Arbitration Between
UNITED SERVICES AUTOMOBILE ASSOCIATION,
COMPANY

Petitioner,

Index No.: 107606/07

-against-

KARL JOHNSON

Respondent(s),

-and-

LANCO WILLIAMS and TRAVELERS INSURANCE
COMPANY, and ALLSTATE INSURANCE COMPANY

Proposed Additional Respondents.

-----X
EMILY JANE GOODMAN, J.S.C.:

This application for an order staying arbitration of Respondent's uninsured motorist claim and adding proposed additional Respondents is granted as provided herein, pending the determination of the issue of whether the alleged offending vehicle was insured by Allstate Insurance Company at the time of the accident.

Petitioner first filed a Petition to Stay Arbitration seeking to add proposed additional respondents Lanco Williams and Travelers Insurance Company. Petitioner then filed a Supplemental Petition to Stay Arbitration seeking to add proposed additional respondents Lanco Williams and Allstate Insurance Company because "since the making of this application, your Affirmant has come to learn that the correct insurance company for the offending vehicle appears to be ALLSTATE INSURANCE COMPANY."

Respondent maintains that the Petition was untimely as it was not filed within 20 days of receipt of the demand for arbitration, pursuant to CPLR 7503 (c). Respondent also maintains that the Supplemental Petition, which no one disputes was not filed within the 20 days, is also untimely.

The twenty day limitation period is computed from when the demand is received, not from when it is mailed, and the day on which the demand is received is not included in the calculation (see Knickerbocker Ins. Co. v Gilbert, 28 NY2d 57, 65 [1971] [applying 10 day period, not 20 day period, required by statute at that time]; Prudential Securities Inc. v Warsh, 214 AD2d 739 [2d Dept 1995]; Interboro Mut. Ins. Co. v Devone, 189 Misc 2d 605 [Sup Ct Nassau County 2001]). Based on the proof submitted by both sides, Respondent fails to establish that the Petition was untimely. As to the Supplemental Petition, although Petitioner did not seek leave of Court to amend its petition as was apparently done in AllCity Insurance Co. v Russo (199 AD2d 88 [1st Dept 1993]), the Court finds no prejudice in granting such amendment, nunc pro tunc, and notes that CPLR 7503 (c) does not prohibit amendment of a timely petition. The copy of the New Jersey Department of Motor Vehicle record submitted with the Supplemental Petition includes a notation under insurance for Allstate Insurance Company, and, indicates a policy number. Thus, Petitioner has raised an issue of fact as to whether Allstate Insurance Company insured the alleged offending vehicle on the date of the accident (see State Farm Mut. Auto. Ins. Co. v Yeqlinski, 79 AD2d 1029 [2d

Dept 1981)). Respondent has not meet his burden to show that the adverse vehicle was not insured on the date of the accident. Accordingly, the arbitration should be temporarily stayed.

It is hereby

ORDERED that the above issues be referred to a Special Referee to hear and report on whether the alleged offending vehicle was insured by Allstate Insurance Company on the date of the accident; 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 Lanco Williams and Allstate Insurance Company 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 receipt of this decision, and it is further

ORDERED that the caption of this proceeding is amended to reflect inclusion of Lanco Williams and Allstate Insurance Company 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 receipt of this decision.

This constitutes the Decision and Order of the Court.

DATED: September 19, 2007

ENTER:



J.S.C.

EMILY JANE GOODMAN

FILED

OCT - 1 2007.

NEW YORK
COUNTY CLERKS OFFICE