

**Matter of Republic W. Ins. Co. v
Liberty Mut. Ins. Co.**

2007 NY Slip Op 33490(U)

October 23, 2007

Supreme Court, New York County

Docket Number: 0106458/2007

Judge: Jane S. Solomon

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

PART 55

Solomon
 Index Number : 106458/2007
REPUBLIC WESTNER INS.CO.
 VS.
LIBERTY MUTUAL INS. CO.
 SEQUENCE NUMBER : 001
 VACATE OF MODIFY AWARD

INDEX NO. _____
 MOTION DATE 6/21/07
 MOTION SEQ. NO. _____
 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 ...
 Answering Affidavits — Exhibits _____
 Replying Affidavits _____

PAPERS NUMBERED
<u>1-3</u>
<u>4-5</u>
<u>6</u>

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered ^{and adjudged} that this ~~motion~~ *petition* is decided in accordance with the annexed memorandum 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 11B)

Dated: 10/23/07

[Signature]
JANE S. SOLOMON J.S.C.

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

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

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : TAS PART 55

-----X

In the Matter of the Arbitration of
Certain Controversies Between
REPUBLIC WESTERN INSURANCE COMPANY,

INDEX NO. 106458/07

ORDER and JUDGMENT

Petitioner,

-against-

LIBERTY MUTUAL INSURANCE COMPANY,

Respondent.

-----X

JANE S. SOLOMON, J.

Petitioner Republic Western Insurance Company

(Republic) brings this proceeding, pursuant to CPLR 7507 and 7511, to vacate the arbitration award dated February 19, 2007, which granted respondent Liberty Mutual Insurance Company (Liberty) \$12,215.62 on behalf of injured party Anthony Indorola, and \$10,157.98 on behalf of Jerry Schmidt.

On or about February 20, 2003, Liberty served Republic with a subrogation action in Arbitration Forums, Inc. (AFI) to recover the no-fault benefits that Liberty had provided to its insureds Indorola, Schmidt, and Nicholas Ruggiero, in connection with a vehicular loss on March 22, 2000. In that loss, the vehicle insured by Liberty, driven by Ruggiero, and occupied by passengers Indorola and Schmidt, was allegedly struck from behind by a U-Haul vehicle insured by Republic, driven by Brian McFarland and carrying a passenger named Joseph Pizzingrillo. Liberty contended that McFarland was liable in negligence for the loss.

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 415)

On or about October 7, 2004, Republic commenced a proceeding to stay the arbitration, contending that the vehicular loss was a staged accident and that, accordingly, there was no insurance coverage, and Liberty could not be reimbursed through loss transfer arbitration. Prior to the commencement of that proceeding, McFarland had been indicted for scheming to defraud in the first degree by staging accidents, and Tara Pizzingrillo, who had been indicted with McFarland, pled guilty to insurance fraud in the third degree, admitting that she had staged accidents together with McFarland and her brother, Joseph Pizzingrillo. By order dated April 8, 2005, Justice York temporarily stayed the arbitration as to Ruggiero, but not as to Indorola or Schmidt. Justice York set the Ruggiero matter down for a framed issue hearing, and noted that Republic had failed to mention either Indorola or Schmidt in the petition and in the affidavit of a special investigator that Republic had employed. Republic Western Ins. Co. v Liberty Mut. Ins. Co., a/a/o Anthony Indorola, Jeremy Schmidt, and Nicholas Ruggiero and Arbitration Forums, Inc., Index No. 114383/04 (Sup Ct, NY County, York, J.). By order filed on August 29, 2006, Justice York found that the alleged loss on March 22, 2000 was a purposefully staged accident that is not covered under the No-Fault Law. Justice York permanently stayed arbitration with regard to Ruggiero, and held that no results from the alleged accident could be "used to obtain relief for damages." Id.

On May 23, 2006, Republic submitted to AFI a May 2006

ruling by Justice York, to the same effect, which he had read into the record. On or about January 4, 2007, Republic notified AFI of Justice York's written order. When the arbitration commenced on January 16, 2007, Republic argued that there was no coverage for the loss pursuant to Justice York's August 29, 2006 order. Liberty argued that Justice York's earlier refusal to stay arbitration with regard to Indorola and Schmidt required Republic to provide coverage for those two claims. On February 19, 2007, AFI issued the Award.

The mandatory arbitration between insurers that is provided for by Insurance Law § 5105 (b) applies only to benefits due to a "covered person." Insurance Law § 5105 (a). It is settled that, where an automobile collision is not accidental, no injury resulting from the collision is covered under the No-Fault Law. See e.g. Matter of Government Employees Ins. Co. v Robbins, 15 AD3d 484 (2d Dept 2005); Matter of Allstate Ins. Co. v Massre, 14 AD3d 610 (2d Dept 2005). Accordingly, once Republic notified AFI that Justice York had held that the purported accident had been staged, and therefore no party thereto had coverage, AFI was without jurisdiction to continue the arbitration absent consent to do so from Republic.

In addition, although CPLR 7507 requires arbitral awards to be "in writing, signed and affirmed by the arbitrator," the Award is unsigned.

Accordingly, it is hereby

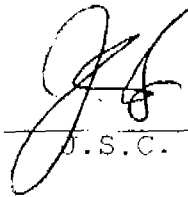
ORDERED and ADJUDGED that the petition is granted and

the arbitration award dated February 19, 2007, which granted respondent Liberty Mutual Insurance Company \$12,215.62 on behalf of injured party Anthony Indorola, and \$10,157.98 on behalf of Jerry Schmidt is vacated.

This constitutes the decision and judgment of the court.

Dated: October 23, 2007

ENTER:



J.S.C.

JANE S. SOLOMON

UNFILED JUDGMENT
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 County Clerk's Desk (Room