

**Matter of Campbell v New Jersey Manufacturers  
Insurance Company**

2007 NY Slip Op 34359(U)

March 19, 2007

Supreme Court, New York County

Docket Number: 0113607/2007

Judge: Judith J. Gische

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

PRESENT: JUDITH J. GISCHE, J.S.C.  
*Justice*

PART \_\_\_\_\_

Index Number : 113607/2007

CAMPBELL, ALAN

vs

NEW JERSEY MFG INS. CO.

Sequence Number : 002

TRIAL DE NOVO

INDEX NO. \_\_\_\_\_

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. \_\_\_\_\_

MOTION CAL. NO. \_\_\_\_\_

his 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

**FILED**  
MAR 25 2008  
NEW YORK  
COUNTY CLERK'S OFFICE

**motion (s) and cross-motion(s)  
decided in accordance with  
the annexed decision/order  
of even date.**

Dated: 3/19/08

JG  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

FOR THE FOLLOWING REASON(S):

REASON(S) TO JUSTICE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 10

-----x  
IN THE MATTER OF THE APPLICATION OF  
ALAN CAMPBELL,

Petitioner,

FOR A TRIAL DE NOVO AFTER AN  
UNDERINSURANCE ARBITRATION BETWEEN  
ALAN CAMPBELL AND NEW JERSEY  
MANUFACTURERS INSURANCE COMPANY,

Respondent.  
-----x

**Decision/Order**

Index No.: 113607/07

Seq. No. : 002

Present:

Hon. Judith J. Gische

J.S.C

**FILED**

MAR 25 2008

NEW YORK  
COUNTY CLERK'S OFFICE

Recitation, as required by CPLR 2219 [a], of the papers considered in the review of this (these) motion(s):

**Papers**

**Numbered**

Pets' petition w/exhs .....	1
Resp's aff in partial opp (VAV) .....	2

*Upon the foregoing papers, the decision and order of the court is as follows:*

Petitioner renews its prior motion seeking a trial de novo for damages after an underinsurance arbitration between himself and respondent New Jersey Manufacturers Insurance Company. Respondent does not oppose the relief requested in the petition but requests that it be allowed to interpose any affirmative defenses it deems appropriate to petitioner's claims and that the respondent be allowed to conduct any discovery which may be outstanding prior to trial.

The prior motion was denied because "[p]etitioner ha[d] not provided any statutory or contractual basis which would otherwise entitle him to the right to a trial de novo." Since the denial was without prejudice, permission to renew is granted. CPLR 2221(d)(2), Foley v. Roche, 68 A.D.2d 558, 567 (1<sup>st</sup> Dept. 1979).

The verified petition provides that on May 18, 1999, petitioner was a "covered person" under the underinsured motorist endorsement of an automobile insurance policy issued by respondent to petitioner (the "policy"). Petitioner has provided a copy of the policy. On that same date, petitioner was a passenger in a vehicle that was involved in an accident with a "hit-and-run automobile." On October 20, 2003, Lancer Insurance Co., the insurer of the vehicle in which petitioner was a passenger, tendered the full \$25,000 of its uninsured motorist policy to petitioner. Then, petitioner claimed underinsurance motorist benefits from respondent, which was then submitted to arbitration on August 15, 2007. In that arbitration, petitioner was awarded \$95,000 on August 15, 2007. Petitioner has provided a copy of the award.

Page 11 of the Policy provides as follows:

**ARBITRATION**

...

C. ... A decision agreed to by two of the arbitrators will be binding unless the arbitration award exceeds the minimum limit for liability specified by the Financial Responsibility Law of New Jersey. If the arbitration award exceeds that limit, either party may demand the right to a trial by jury on all issues. This demand must be made within 60 days of the arbitrators' decision. If this demand is not made, the amount of damages agreed to by the arbitrators will be binding.

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The Financial Responsibility Act of New Jersey sets the minimum liability limits at \$15,000. Therefore, pursuant to the policy, either party had a right to reject any award received in the underlying arbitration because the award was in excess of New Jersey's minimum bodily injury liability limits. Moreover, either party may "demand the right to a trial by jury on all issues."


While petitioner merely seeks a trial de novo on the issue of damages, respondent requests an opportunity to interpose affirmative defenses and conduct discovery prior to trial. Respondent claims that it may need updated authorizations and updated medical records and/or further deposition of the petitioner on the issue of damages. Respondent has provided proposed affirmative defenses.

Accordingly, both parties have established entitlement to a trial de novo on all issues, pursuant to the policy. Therefore, the award rendered in the underlying arbitration and dated August 15, 2007 is hereby vacated and respondent's affirmative defenses are deemed served on petitioner. The court hereby sets this matter down for a preliminary conference to be held on May 1, 2008 at 80 Centre Street, Room 122, at which time a discovery schedule and note of issue deadline will be set. All parties are directed to appear at that time.

Any requested relief not expressly addressed has nonetheless been considered and is hereby denied.

This shall constitute the decision and order of the court.

Dated: New York, New York  
March 19, 2007

So Ordered:   
HON. JUDITH J. GISCHE, J.S.C.  
COUNTY OF NEW YORK  
CLERK'S OFFICE

**FILED**

MAR 25 2008