

Matter of Allstate Ins. Co. v Rivera

2007 NY Slip Op 34411(U)

September 26, 2007

Supreme Court, Suffolk County

Docket Number: 16734/07

Judge: Arthur G. Pitts

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Supreme Court of the State of New York
IAS Part 43 - County of Suffolk

PRESENT:

HON. Arthur G. Pitts

Justice of the Supreme Court

In the Matter of the Application of ALLSTATE
INSURANCE COMPANY, to Stay Arbitration,

Petitioner,

-against-

NYDIA RIVERA, LISA RIVERA, NADINE
VALOY, CHARISSE MERCADO and SASHA
QUINTANILLA,

Respondents.

ORIG. RETURN DATE: 7/18/07
FINAL SUBMIT DATE: 7/18/07
MOTION SEQ. NO.: 001-MG

PLTF'S/PET'S ATTY:

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Upon the following papers numbered 1 to 17 read on this motion article 75
Notice of Motion/OSC and supporting papers 1-8; Notice of Cross-Motion and supporting papers _____;
Affirmation/affidavit in opposition and supporting papers 9-17; Affirmation/affidavit in reply and supporting papers _____;
Other _____; (and after hearing counsel in support of and opposed to the motion) it is,

ORDERED that the instant petition for an order permanently staying the arbitration in this matter is granted under the circumstances presented herein. (CPLR 7503)

The matter *sub judice* is a petition to stay arbitration. Respondents Nydia Rivera, Lisa Rivera, Nadine Valoy, Charisse Mercado and Sasha Quintanilla aver that they were passengers in a vehicle owned and operated by Petra Mercado, petitioner Allstate Insurance Company's insured, which was involved in a motor vehicle accident on July 15, 2005 that occurred on Montauk Highway, Shirley, Suffolk County, New York.. The operator and owner of the second vehicle, Nilza Rodriguez was insured by GMAC Insurance Company. ("GMAC") On or about May 30, 2007 the petitioner was served with Demands of Arbitration dated May 29, 2007.

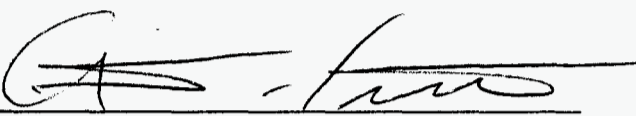
ALLSTATE V RIVERA
INDEX NO. 16734/07
PAGE 2

\$25,000 being paid to Petra Mercado and \$25,000 being distributed to the remaining respondents equally. It is well settled that “underinsured motorist benefits are available when the bodily injury liability limits of the offending vehicle’s insurance policy are less than the bodily injury liability limits of the insured’s policy. [citations omitted]” (*Liberty Mutual Insurance Company v. D’Antonio*, 266 A.D.2d 393, 697 N.Y.S.2d 532 [2nd Dept 1999]) Herein the bodily injury liability limits of \$25,000 per person and \$50,000 per accident issued by the petitioner to Petra Mercado are equal to the limits of the offending vehicle and as such, the underinsured coverage is not triggered. Accordingly, the petition is granted and the arbitration is permanently stayed.

This shall constitute the decision and order of the Court.

So ordered.

Dated: Riverhead, New York
September 26, 2007



J.S.C.

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