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

PRESENT: Joan B. Lobis PART 6

Index Number : 110613/2009
GOVERNMENT EMPOLYEES
VS.
VINCI, NELLA
SEQUENCE NUMBER : 001
COMPEL OR STAY ARBITRATION

INDEX NO. _____
MOTION DATE 9/9/09
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ... Petition	1-5
Answering Affidavits — Exhibits	6-9
Replying Affidavits	10

Cross-Motion: ☐ Yes ☑ No

Upon the foregoing papers, it is ordered that this motion

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 141B).

MOTION DECIDED IN ACCORDANCE WITH ACCOMPANYING DECISION AND ORDER

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

Dated: 9/29/09

J.S.C.

Check one: ✓ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6

----------X

In the Matter of the Application of
GOVERNMENT EMPLOYEES INSURANCE
COMPANY, to Stay Arbitration,

Petitioner, Index No. 110613/09

-against-

NELLA VINCI,

Respondent.

----------X

JOAN B. LOBIS, J.S.C.:

Petitioner, Government Employees Insurance Company ("GEICO"), brings this petition seeking an order staying arbitration until such time as respondent has complied with all conditions precedent under the insurance contract or, in the alternative, directing respondent to provide all relevant medical records and authorizations, including a no-fault authorization, and to submit to an examination under oath and physical examinations prior to proceeding to arbitration.

GEICO sets forth that on or about July 7, 2009, it received a demand for arbitration from Nella Vinci's attorneys, which refers to an automobile accident that occurred on February 20, 2005. The insurance policy issued by GEICO to Ms. Vinci provides for uninsured/underinsured motorist benefits. GEICO submits that Ms. Vinci has not fully complied with the necessary conditions precedent to arbitration. Specifically, GEICO claims that by correspondence dated July 14, 2009, GEICO "requested that respondent execute a stipulation agreeing to submit to a physical examination and examination under oath, and to exchange medical records and authorizations in accordance with the express terms of the GEICO policy." GEICO asserts that respondent's attorney has "failed to execute and return the stipulation, or to provide petitioner with the requested

discovery." GEICO considers this failure to be a material breach of the insurance contract, and accordingly, argues that the arbitration should be stayed until respondent has submitted all medical records and authorizations, and has submitted to physical examinations and an examination under oath.

In opposition, respondent claims that she has provided all medical records with authorizations to GEICO in various correspondence, beginning on November 8, 2006. Respondent points out that GEICO never requested an examination under oath or medical examinations until after being served with the recent demand for arbitration. Annexed to respondent's papers is correspondence from GEICO dated May 30, 2007, whereby GEICO grants respondent permission to settle her bodily injury claim with the adverse tort carrier, and sets forth that

> [t]he following information is required to pursue an underinsured motorist bodily injury claim with GEICO:
>
> 1. A copy of the declaration sheet or an affidavit from the adverse carrier documenting the bodily injury limits of its policy holder.
>
> 2. A copy of the duly executed Release for the adverse carrier's policy limits.
>
> 3. Medical specials documenting [respondent's] injuries.
>
> 4. A written authorization to obtain a copy of [respondent's] No-Fault file.
>
> 5. [Respondent's] theory of liability with reference to this accident.

The letter recites that upon receipt of these items, the claims examiner would review the underinsurance claim. Respondent argues that twenty-five (25) months elapsed before GEICO

demanded medical examinations or an examination under oath, and as such, GEICO should now be denied these unjustifiable, untimely requests.

In reply, GEICO points out that the underinsurance claim was not triggered until May 2007, when respondent settled her claim with the adverse tort carrier. GEICO also argues that respondent attached "no proof to her reply that GEICO was put on notice of the [u]nderinsurance claim" before respondent filed the demand for arbitration. This statement is disingenuous, since the letter GEICO sent to respondent's attorney in May 2007 references respondent's underinsurance claim and sets forth the materials GEICO was requesting in order to review the claim. Clearly, GEICO was on notice of the underinsurance claim as of May 2007.

While C.P.L.R. § 3102(c) "expressly empowers the court to direct disclosure in aid of arbitration" (Int'l Components Corp. v. Klaiber, 54 A.D.2d 550, 551 [1st Dep't 1976]), the court should not direct disclosure in arbitration proceedings "except under extraordinary circumstances." Id. "Court-ordered disclosure is not justified except where it is absolutely necessary for the protection of the rights of a party." Id. Except for boilerplate language at the end of the petition, GEICO's petition does not articulate the necessity of this requested discovery, and the court does not find GEICO's professed lack of knowledge or notice of respondent's underinsurance claim entirely candid. Moreover, this case has been before GEICO for over four years since the accident, and for over two years since GEICO expressly gave permission to respondent to settle her bodily injury claims with the adverse tort insurer. It appears that respondent has provided GEICO with numerous medical records and authorizations, as requested by GEICO, over the past few years. Where an

insurer has had "ample time . . . within which to seek discovery of the respondent insured as provided for in the insurance policy, and unjustifiably fail[s] to utilize that opportunity" (Allstate Ins. Co. v. Urena, 208 A.D.2d 623 [2d Dep't 1994]), it is a provident exercise of the trial judge's discretion to deny the insurer's request to stay arbitration to allow for discovery. Id. Except for the letter from GEICO that was mailed after GEICO received the demand for arbitration, none of the correspondence from GEICO requesting discovery throughout its management of respondent's case mentions that GEICO was requesting an examination under oath or a medical examination. See Matter of State-Wide Ins. Co. v. Womble, 25 A.D.3d 713 (2d Dep't 2006).

The stay is denied and the petition is dismissed. This constitutes the decision, order, and judgment of the court.

Dated: September 29, 2009

JOAN B. LOBIS, J.S.C.

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 141B).