

**Matter of Government Empls. Ins. Co. v
Polo-Apolinar**

2010 NY Slip Op 31639(U)

June 18, 2010

Supreme Court, New York County

Docket Number: 104385/10

Judge: Jane S. Solomon

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

PRESENT: JANE S. SOLOMON

PART 55

Justice

Index Number : 104385/2010
GOVERNMENT EMPLOYEES
 VS.
POLO-APOLINAR, JOSE N.
 SEQUENCE NUMBER : 001
 COMPEL OR STAY ARBITRATION

INDEX NO. _____
 MOTION DATE _____
 MOTION SEQ. NO. _____
 MOTION CAL. NO. _____

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

*See annexes
 Decision & Order*

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

Dated: 6/18/10

[Signature]
JANE S. SOLOMON 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
COUNTY OF NEW YORK : IAS PART 55

-----x

In the Matter of the Application of
GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Petitioner,

DECISION AND ORDER

Index No: 104385/10

-against-

JOSE N. POLO-APOLINAR,

Respondent,

and

HARTFORD CASUALTY INSURANCE COMPANY,
SENTINEL INSURANCE COMPANY, LTD.,
PHILLIP RUSSELL and CECIL D.
SINGLETON,

Proposed Additional
Respondents.

-----x

SOLOMON, JANE J.:

This petition to stay arbitration is granted to the extent that a trial is directed regarding the preliminary issue of whether a vehicle involved in an alleged accident on April 2, 2009, in which respondent Jose N. Polo-Apolinar (Polo-Apolinar) claims he was injured, was insured at the time of the accident. Petitioner alleges that the offending vehicle, a 2008 Ford owned by proposed additional respondent Phillip Russell (Russell), and operated by proposed additional respondent Cecil D. Singleton (Singleton), was insured by proposed additional respondents Hartford Casualty Insurance Company or Sentinel Insurance Company, Ltd. (together referred to as "Hartford", because they

are related companies).

Polo-Apolinar filed a demand for arbitration to obtain uninsured motorist benefits under his insurance policy, claiming that the offending vehicle was uninsured at the time. The accident report does not indicate an insurance company. Polo-Apolinar had contacted Hartford to report a claim, but was notified by a letter of April 22, 2009 that Hartford declined coverage because the claim arose after a policy it had issued was cancelled (Notice of Petition, Ex. C).

Hartford insured a vehicle owned by a "Russell Kenya" at the same address in Virginia stated on Phillip Russell's vehicle registration. Hartford sent a notice dated November 10, 2008 to Russell Kenya that the insurance was canceled effective December 1, 2008, due to the insured's failure to pay premiums. \

GEICO contends that Hartford has not met its burden of showing that the disclaimer is valid under Virginia law. In particular, Virginia Code § 38.2-2212 provides that cancellations must be printed in 8 point type, and fifteen days advance written notice of cancellation must be sent by registered or certified mail.

The copy of Hartford's cancellation notice, annexed to Hartford's opposition at Ex. A, does not appear to be in 8 point type (in fact, it appears to be larger), and the purported record of mailing is not supported by the affidavit of a person with

knowledge to show the notice was in fact sent on or about the date of the notice. On the present record, it cannot be said that a valid cancellation was made. Accordingly, a framed issue hearing is required to determine if the cancellation is valid under Virginia Law.

Petitioner shall serve a copy of this order with notice of entry upon the attorneys for respondent and the arbitrator.

Hartford Casualty Insurance Company, Sentinel Insurance Company, Ltd., Phillip Russell and Cecil D. Singleton shall be added as parties/respondents upon petitioner's service on them of a copy of this order with notice of entry and copies of all papers previously served in this proceeding.

Petitioner shall serve the Trial Support Clerk and the Clerk of the Court with a copy of this order with notice of entry, and said Clerks shall mark their records to reflect the amendment of the caption of this proceeding to include Hartford Casualty Insurance Company, Sentinel Insurance Company, Ltd., Phillip Russell and Cecil D. Singleton as additional parties/respondents.

Petitioner's service of this order as set forth above shall be made within twenty days of its entry.

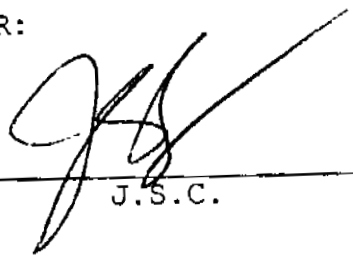
Petitioner shall file a Note of Issue and a Statement of Readiness and pay any appropriate fees within 45 days of entry of this order, and the Trial Support Clerk then shall assign this matter to Part 55 for trial.

Petitioner's failure to comply timely with this order shall result in the denial of the petition and a direction from this court that this matter be arbitrated forthwith.

This constitutes the decision and order of the court.

Dated: June 18, 2010

ENTER:



J.S.C.

JANE S. SOLOMON

FILED
JUN 29 2010
COUNTY CLERK'S OFFICE
NEW YORK