

**American Tr. Ins. Co. v Orumen**

2011 NY Slip Op 30541(U)

March 8, 2011

Supreme Court, New York County

Docket Number: 401548/2010

Judge: Martin Schoenfeld

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

PRESENT: Schoenfeld  
*Justice*

PART 28

Index Number : 112589/2010  
AMERICAN TRANSIT INSURANCE  
VS.  
ORUMEN, OAIKLIENA  
SEQUENCE NUMBER : 001  
COMPEL OR STAY ARBITRATION

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

this motion to/for stay arbit.

PAPERS NUMBERED

1-3  
4-5 6-7

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 *is decided in accordance with the accompanying memorandum decision*

**FILED**

MAR 10 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 3/8/11

[Signature]  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 28

-----X  
AMERICAN TRANSIT INSURANCE COMPANY,

Petitioner,

**MEMORANDUM DECISION  
AND ORDER**

-against-

Index No.: 401548/2010

OAIKLIENA ORUMEN,

Respondent,

and

KENNETH J. LOPEZ and TRUCK INSURANCE  
EXCHANGE,

Proposed Additional Respondents.  
-----X

For Petitioner:  
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330 West 34<sup>th</sup> Street, 7<sup>th</sup> Floor  
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For Respondent Oaikliena Orumen:  
Okun, Oddo & Babat, P.C.  
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New York, New York 10018

For Proposed Respondents:  
John C. Buratti & Associates  
150 Broadway, Suite 1400  
New York, New York 10038

**FILED**

**MAR 10 2011**

**NEW YORK  
COUNTY CLERK'S OFFICE**

HON. MARTIN SCHOENFELD, J.:

In this Article 75 proceeding, Petitioner, American Transit Insurance Company, seeks a permanent stay of arbitration of an uninsured motorist claim brought by Respondent, Oakliena Orumen, on the ground that Respondent has not established proof that the other vehicle involved in the accident was uninsured on the date of the accident. In the alternative, Petitioner seeks an order from the court to: 1) join the proposed Respondents Kenneth J. Lopez and Truck Insurance Exchange (hereinafter "Proposed Respondents") as necessary parties; 2) temporarily stay the

arbitration; and 3) hold a framed issue hearing on the issue of insurance coverage. Finally, if this court finds that the vehicle was uninsured at the time of the accident and that arbitration is necessary, Petitioner asks the court to order an examination under oath and an independent medical examination of Respondent prior to the arbitration.

Respondent opposes a permanent stay of the arbitration but consents to a temporary stay to allow the joining of the Proposed Respondents and to hold a frame issue hearing. Proposed Respondents, through an Affirmation in Opposition and supporting documents, argue that they should not be added as parties to this proceeding.

For the reasons set forth below, the court grants the petition to the extent that it orders that the Proposed Respondents be joined in the action and that the arbitration be temporarily stayed for the purposes of holding a framed issue hearing.

**BACKGROUND**

This proceeding arises out of an automobile accident that occurred on February 8, 2010, from which Respondent alleges she suffered personal injuries. The police report indicates that while waiting at a red light, Respondent's vehicle was struck in the rear by a truck which left the scene of the accident.

The vehicle that Respondent was driving was apparently insured by Petitioner through policy number CAP605738 issued to Adom Rental Transportation, Inc. Under this policy, Petitioner agreed to pay for some injuries "caused by an accident arising out of the ownership, maintenance or use of a Supplementary Uninsured Automobile."

According to the police report, the truck that hit Respondent had a New York license plate with the number EJU4339. A DMV printout indicates the vehicle bearing that license

\* 4]

plate was registered to Kenneth J. Lopez and was insured by Truck Insurance Exchange, the Proposed Respondents, under policy no.: 17596-58-13. In their Opposition, Proposed Respondents confirm that Mr. Lopez was insured by Truck Insurance Exchange at the time of the accident but deny that Mr. Lopez's vehicle was involved in the accident. They submit a letter from the insurance company dated August 17, 2010, indicating that the vehicle had been inspected by them and concluding that it was not involved in the accident.

On September 8, 2010, Petitioner received a demand for arbitration from the Respondent in this matter. This Petition was filed on September 24<sup>th</sup>, 2010, within the twenty days required by Article 75.

## DISCUSSION

Petitioner here argues that it is entitled to a permanent stay of the arbitration because Respondent "has failed to furnish sufficient evidence to support his allegations that the offending vehicle [the truck that hit Respondent] was uninsured on the date of loss." However, it is well settled that a petitioner requesting a stay of arbitration, and not the Respondent, has "the burden of showing the existence of sufficient evidentiary facts to establish a genuine preliminary issue." Empire Mut. Ins. Co. v. Zelin, 120 A.D.2d 365, 366 (1<sup>st</sup> Dept. 1986) (citations omitted).

Here, Petitioner has not provided sufficient evidence that the "offending vehicle" was insured to justify a permanent stay of arbitration. Instead, the evidence presented suggests that there is a preliminary issue of whether Proposed Respondent Lopez's vehicle was the truck that struck Petitioner's vehicle. The police report together with the DMV print out indicate that Lopez's vehicle was the hit and run vehicle and that it was insured by Truck Insurance Exchange. Yet, although Proposed Respondents concede that Lopez is insured by Truck Insurance

\* 5]  
Exchange, they deny his involvement in the accident and have presented evidence that an inspection of his vehicle was conducted that showed he was not involved. Thus, the court must first determine whether Mr. Lopez's vehicle was indeed involved in the accident.

In accordance, the court grants the Petition in so far that it orders a temporary stay to hold a framed-issue hearing concerning Mr. Lopez's vehicle's involvement in the accident.

Moreover, as Proposed Respondents are necessary parties at this hearing, the court orders that they be joined in this action.

Therefore, in accordance with the foregoing, it is

ORDERED that there be a temporary stay of the arbitration pending a framed issue hearing before this court in accordance with the above decision; and it is further

ORDERED that Kenneth J. Lopez and Truck Insurance Exchange be joined as Respondents in this petition and that their names be added to the caption of this proceeding; and it is further

ORDERED that upon filing a note of issue and statement of readiness, counsel shall contact chambers to arrange a hearing date in this matter.

  
\_\_\_\_\_

J.S.C.

Dated: New York, New York  
March 8, 2011

**FILED**

**MAR 10 2011**

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