

Matter of Government Empls. Ins. Co. v Sup C

2011 NY Slip Op 32357(U)

August 23, 2011

Sup Ct, Nassau County

Docket Number: 4730/11

Judge: Denise L. Sher

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Acting Supreme Court Justice

In the Matter of the Application of

TRIAL/IAS PART 32
NASSAU COUNTY

GOVERNMENT EMPLOYEES INSURANCE
COMPANY to Stay Arbitration,

Petitioner,

Index No.: 4730/11
Motion Seq. No.: 02
Motion Date: 06/10/11

- against -

TONY TROISE,

Respondent.

The following papers have been read on this application:

	Papers Numbered
Notice of Amended Petition, Amended Petition and Exhibits	1
Affirmation in Partial Opposition	2
Reply Affirmation	3

Upon the foregoing papers, it is ordered that the application is decided as follows:

Petitioner, by Notice of Amended Petition, moves for an order amending petitioner's Notice of Petition dated March 29, 2011; moves, pursuant to CPLR § 7503, for an order permanently staying the arbitration between petitioner and respondent, or, in the alternative, temporarily staying the arbitration in this matter on the grounds that the offending vehicle was insured on the date of the accident; moves for an order joining Scott Insurance Co., Tonia M. Rockhead and Samantha E. Boyd to this proceeding and amending the caption accordingly; moves for an order setting the matter down for a preliminary hearing on the issue of whether the

offending vehicle was, in fact, "uninsured;" and moves for an order directing respondent to comply with the disclosure provisions of petitioner's policy if it is determined after the hearing that the respondent is entitled to proceed to arbitration. Respondent submitted partial opposition to petitioner's application. The Verified Petition is granted to the extent set forth below.

Based upon the papers submitted for the Court's consideration, the Court makes the following findings of fact:

1. Prior to September 11, 2010, petitioner issued to respondent an insurance policy by which petitioner provided, as mandated by Section 3420(f) of the Insurance Law, uninsured motorist coverage.
2. The herein above described insurance policy was in effect on September 11, 2010.
3. On September 11, 2010, respondent allegedly received personal injuries due to a five car motor vehicle accident that took place in the vicinity the southbound Bruckner Expressway and its intersection with East Tremont Avenue, Bronx, New York. According to the police report, "[a]t T/P/O operator of vehicle 1 states after being cut off by a reckless driver there was an accident up ahead which happened so quickly he could not stop, therefore striking vehicle 2. Operator of vehicle 2 states when she stopped behind vehicle 3 vehicle 1 struck her from behind causing her to strike vehicle 3. Operator of vehicle 3 states he stopped behind vehicle 5 who left scene and was struck from behind by vehicle 2 who pushed him into vehicle 5 who ultimately hit vehicle 4 causing driver of veh 4 to sustain pain to her head (Driver RMA)." Vehicle 3 was owned and operated by respondent. "Vehicle 2" is the alleged "uninsured" vehicle which was owned by Tonia M. Rockhead and operated by Samantha E. Boyd.
4. With respect to Vehicle 2, a 2001 BMW, it appeared that, based upon the police accident report, said vehicle was insured under policy number K3479061 issued by Scott

Insurance Company.

5. On March 24, 2011, petitioner received an Amended Request for UM Arbitration from its insured, respondent, in connection with the September 11, 2010 accident.

6. Petitioner submits that, pursuant to the Accident Report, it appears as if all of the vehicles involved in the September 11, 2010 accident were insured at the time to the loss and, more specifically, that Vehicle 2 was insured as described above.

Petitioner first states that it previously commenced this proceeding on March 30, 2011, requesting an order permanently staying arbitration on the grounds that respondent's underinsured motorist claim was premature since he failed to tender any proof that the policy covering the offending vehicle, Vehicle 2, a 2001 BMW owned by Tonia M. Rockhead and operated by Samantha E. Boyd, had indeed been exhausted, a necessary condition precedent. In the interim, respondent filed an uninsured motorist claim, alleging that Vehicle 2 was "uninsured." Therefore, petitioner requests an order amending its Notice of Petition dated March 29, 2011 to reflect the change from underinsured to uninsured.

Additionally, as previously stated, petitioner argues that, since it appears that all vehicles were in fact insured at the time of the accident, arbitration should be permanently stayed.

Petitioner also argues, in the alternative, if the Court denies petitioner's application for a permanent stay of the arbitration in this matter, that the Court grant a temporary stay of arbitration, set down the matter for a preliminary hearing to determine whether Vehicle 2 was in fact "uninsured" and join Scott Insurance Co., Tonia M. Rockhead and Samantha E. Boyd to this proceeding and amend the caption of this proceeding to reflect said joinder.

Petitioner further submits that, under petitioner's policy, respondent is required to furnish petitioner with a copy of all relevant medical records and authorizations and to submit to an examination under oath and physical examinations prior to proceeding to arbitration.

Accordingly, if it is determined after a hearing that respondent is entitled to proceed to arbitration under petitioner's policy, petitioner requests that respondent be directed to furnish petitioner with the disclosure required under the insurance contract.

Respondent opposes petitioner's application for an order permanently staying the uninsured motorist arbitration, but consents to a temporary stay of arbitration pending a hearing and determination on the issue of whether Vehicle 2 was "uninsured" at the time of the subject motor vehicle accident and agrees with petitioner that Scott Insurance Co., Tonia M. Rockhead and Samantha E. Boyd should be joined as additional respondents in the instant proceeding for the purposes of said hearing. Additionally, with respect to petitioner's request for discovery, respondent states that he shall continue to comply with any and all discovery demands as conditions precedent to arbitration upon such demands being made by petitioner.

In its reply papers, petitioner indicates that "[s]ince service of the GEICO's Notice of Amended Petition, your affiant contacted Mark Scott from Scott Insurance on June 13, 2011, the entity listed as the insurer for the Rockhead vehicle on the police report [Vehicle 2], and ascertained that Scott Insurance was merely the agent for General Ins. Co of America, a division of Safeco. I was further advised that General Ins. Co of America set up a claim under claim # 156308464041, and that claims examiner, Heidi Pawelski had been assigned to this matter. Your affiant thereafter spoke to Ms. Pawelski who advised that the claim was under investigation for a possible fraudulently issued insurance identification card. To date, I have not received a denial from General Ins. Co of America or any proof of an alleged fraudulently issued ID card. Accordingly, General Ins Co. of America, instead of Scott Insurance should be joined to this proceeding, along with Tonia Rockhead and Samantha Boyd..."

Petitioner's application to amend its Notice of Petition dated March 29, 2011, is hereby **GRANTED.**

Furthermore, under the circumstances alleged by petitioner, the petition should be **GRANTED to the sole extent** that a Framed Issue Hearing shall be had to determine whether

Vehicle 2 was “uninsured” on the date of the subject accident, September 11, 2010, and, if said vehicle was insured, whether General Insurance Company of America properly disclaimed coverage. *See Allstate Insurance Co. v. Anderson*, 303 A.D.2d 496, 755 N.Y.S.2d 724 (2d Dept. 2003).

Petitioner’s request that proposed additional respondents, General Insurance Company of America, Tonia M. Rockhead and Samantha E. Boyd, be added to the proceeding in order for a Framed Issue Hearing to be held is hereby **GRANTED**. General Insurance Company of America, Tonia M. Rockhead and Samantha E. Boyd are hereby added as necessary parties (*See* CPLR § 1001) provided petitioner obtains jurisdiction over such parties pursuant to CPLR Art. 3 by service of a copy of this Order and all papers upon which it is based within twenty (20) days after entry. A failure to add such parties may result in a dismissal for the failure to add a necessary party (*See* CPLR §1003).

It is thereby ordered that the caption of this instant action be amended to:

In the Matter of the Application of

GOVERNMENT EMPLOYEES INSURANCE
COMPANY to Stay Arbitration,

Petitioner,

- against -

TONY TROISE,

Respondent,

-and-

GENERAL INSURANCE COMPANY OF AMERICA,
TONIA M. ROCKHEAD and SAMANTHA E. BOYD,

Additional Respondents.

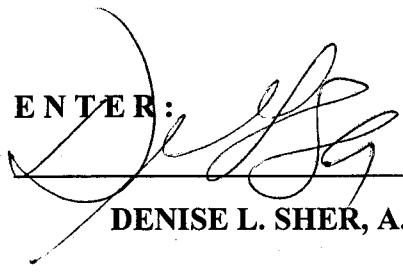
There shall be a response to the Amended Petition by added respondents. Such response shall be served no later than twenty (20) days after jurisdiction has been obtained. The response by purported insurer shall include copies of all documentation and affidavits relied upon in support of the claims of coverage or non-coverage.

Petitioner shall serve a Note of Issue no later than sixty (60) days after entry of this Order. The Note of Issue shall be accompanied by a copy of this Order and proof that jurisdiction has been obtained over all necessary parties and a statement that a copy of such Order has been mailed to all parties to the original Amended Petition within fifteen (15) days after entry. Failure to file a Note of Issue or appear as directed shall be deemed an abandonment of the claim giving rise to the hearing.

All parties are hereby ordered to comply with the applicable discovery demands; the Court noting that petitioner's demands for discovery were unopposed by respondent as long as said demands were completed in the appropriate time frame.

Accordingly, as previously stated, the application is **GRANTED to the sole extent** that a Framed Issue Hearing shall be had to determine whether Vehicle 2 was "uninsured" on the date of the subject accident, September 11, 2010, and, if said vehicle was insured, whether General Insurance Company of America properly disclaimed coverage. To that end, the matter is hereby set down for a hearing to be held before the Calendar Control Part (CCP) on October 24, 2011, at 9:30 a.m.

This constitutes the Decision and Order of this Court.

ENTER: 
DENISE L. SHER, A.J.S.C.

Dated: Mineola, New York
August 23, 2011

ENTERED
AUG 29 2011
NASSAU COUNTY
COUNTY CLERK'S OFFICE