

American Transit Ins. Co. v Guzman

2011 NY Slip Op 34026(U)

June 13, 2011

Supreme Court, New York County

Docket Number: 100194/11

Judge: Anil C. Singh

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This opinion is uncorrected and not selected for official publication.

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

HON. ANIL C. SINGH
SUPREME COURT JUSTICE

PRESENT:

PART 61

Index Number : 100194/2011
AMERICAN TRANSIT INSURANCE
vs.
GUZMAN, ANDRES
SEQUENCE NUMBER : 001
COMPEL OR STAY ARBITRATION

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

his 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 *is decided in accordance with the annexed order.*

Dated: 6/15/11

(Signature)
HON. ANIL C. SINGH J.S.C.
SUPREME COURT JUSTICE

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 61

-----X

In the Matter of the Arbitration attempted to be had
Between AMERICAN TRANSIT INSURANCE
COMPANY,

Petitioner,

DECISION AND
ORDER

-against-

Index No.
100194/11

ANDRES GUZMAN,

Respondent,

JOHN TOMLINSON and PROGRESSIVE
CASUALTY INSURANCE COMPANY,

Proposed Additional Respondents.

-----X

HON. ANIL C. SINGH, J.:

Petitioner American Transit Insurance Company ("ATIC") moves to permanently stay the arbitration sought to be had by respondent or, in the alternative, to temporarily stay the arbitration until a preliminary hearing may be held on the issue of the validity of State Farm's disclaimer, and ordering that the proposed additional respondents be joined as necessary parties. In the alternative, if the Court finds that the adverse vehicle was uninsured on the date of the accident, and that arbitration is necessary, petitioner requests that respondent be directed to appear for an EUO and for an IME, to be completed prior to arbitration,

and to produce authorizations for all diagnostic films and medical records.

Respondent opposes the petition

Respondent Andres Guzman was allegedly injured while operating a vehicle insured by ATIC on November 28, 2008, on Walton Avenue near the intersection with East 175th Street in the Bronx.

According to the police accident report, the adverse vehicle was registered to John Tomlinson and operated by Teudi Flores. The vehicle was insured by Progressive Casualty Insurance Company (“Progressive”).

Progressive mailed two letters disclaiming coverage. Both of the letters are dated November 19, 2009.

The first letter states that Progressive was disclaiming coverage for failure to report the accident in accordance with the policy requirements. The second letter states that Progressive was disclaiming coverage on the grounds that John Tomlinson was not insured with them at the time of the accident on November 28, 2008.

Petitioner contends that the two disclaimer letters cannot be reconciled with each other as one implies that there was a policy in effect on the date of loss and the second contends that there was no policy in effect on that date. According to petitioner, the fact that there are two letters disclaiming coverage on two different

grounds that are inconsistent with each other renders both disclaimers invalid.

Accordingly, petitioner contends that respondent has failed to furnish sufficient evidence to support his allegations that the offending vehicle was uninsured on the date of loss. Therefore, the uninsured motorist arbitration in this matter should be permanently stayed.

In light of the conflicting letters, the Court finds that a framed issue must be held to determine which denial of coverage was valid.

For the above reasons, it is hereby

ORDERED that the petition to stay arbitration is granted to the extent that a trial is directed of the preliminary issue as to coverage [which denial of coverage was valid], and the arbitration is stayed pending such trial; and it is further

ORDERED that the Clerk of the Trial Support Office (Room 158) is directed to assign this matter to an appropriate Part for trial upon receipt of a copy of this order with notice of entry, the filing of a note of issue and a statement of readiness, and the payment of appropriate fees, if any; and it is further

ORDERED that petitioner is directed to serve a copy of this order with notice of entry within 20 days of entry upon the attorneys for the respondent, the arbitrator, the County Clerk, and the Clerk of the Trial Support Office (Room 158); and it is further

ORDERED that petitioner is directed to serve a copy of this order with notice of entry, together with copies of all papers previously served in the proceeding, upon John Tomlinson and Progressive Casualty Insurance Company, who upon such service shall be added as party respondents, and it is further

ORDERED that the caption of this proceeding is amended to reflect inclusion of said additional party respondents and the County Clerk (Room 141B) and the Clerk of the Trial Support Office (Room 158), upon service by petitioner on each of them of a copy of this order with notice of entry, shall mark their records to reflect the amendment; and it is further

ORDERED that respondent is directed to provide medical records and authorizations, and to submit to an examination under oath and physical examinations, if after a hearing it is determined that respondent is entitled to proceed to arbitration.

The foregoing constitutes the decision and order of the court.

Date: June 13, 2011
New York, New York



Anil C. Singh

**HON. ANIL C. SINGH
SUPREME COURT JUSTICE**