

**Matter of Country-Wide Ins. Co. v Richardson**

2011 NY Slip Op 34032(U)

June 29, 2011

Sup Ct, New York County

Docket Number: 100142/11

Judge: Emily Jane Goodman

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This opinion is uncorrected and not selected for official publication.

213  
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: EMILY JANE GOODMAN  
*Justice*

PART 17

Index Number : 100142/2011  
COUNTRY-WIDE INSURANCE  
VS.  
RICHARDSON, MANUEL  
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

*is denied*

*is denied*

**FILED**

JUL 13 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Dated: 6/29/11

Check one:  FINAL DISPOSITION

NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST

REFERENCE

SUBMIT ORDER/ JUDG.

SETTLE ORDER/ JUDG.

*[Signature]*  
EMILY JANE GOODMAN  
J.S.C.

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

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK - I.A.S. Part 17

-----X

In the Matter of the Application of  
COUNTRY-WIDE INSURANCE COMPANY,

Petitioner(s),

Index No.: 100142/11

-vs-

For An Order Staying the Arbitration  
Demanded by MANUEL RICHARDSON,

Respondent(s),

-and-

D. KOURTZOGLU, THOMAS K KOURTZOGLU,  
CARLYS B. VARGAS, CARMEN MARIA VARGAS,  
ALLSTATE INSURANCE COMPANY & "JOHN DOE"  
INSURANCE COMPANY.

**FILED**

JUL 13 2011

NEW YORK  
COUNTY CLERK'S OFFICE

Proposed Additional Co-Respondents.

-----X

EMILY JANE GOODMAN, J.S.C:

This application for an order permanently or temporarily  
staying arbitration of Respondent's uninsured motorist claim and  
for an order joining proposed additional respondents is granted to  
the extent that the arbitration is temporarily stayed, pending the  
determination of the issue of whether the alleged offending vehicle  
was insured by Praetorian Insurance Company on July 28, 2010, the  
date of the accident and adding the specified proposed additional  
respondents.

\* 3]

Although the Petition sought to add proposed additional respondents D. KOURTZOGLOU, THOMAS K KOURTZOGLOU and ALLSTATE INSURANCE COMPANY, and John Doe INSURANCE COMPANY the amended petition only seeks to add CARMEN MARIA VARGAS (and presumably CARLYS B. VARGAS) and PRAETORIAN INSURANCE COMPANY, apparently dropping D. KOURTZOGLOU, THOMAS K KOURTZOGLOU and ALLSTATE INSURANCE COMPANY, in response to Respondent's opposition noting the evidence that the driver Carlys B. Vargas admitted to police at the scene that she was distracted by construction workers, causing her to rear end the car insured by ALLSTATE INSURANCE COMPANY, thereby pushing that car into Respondent's car. Despite Respondent's objection to a framed issue hearing on whether PRAETORIAN INSURANCE COMPANY insured the offending vehicle, Petitioners citation to a DMV Extract, which it claims indicates that PRAETORIAN INSURANCE COMPANY insured the vehicle driven by Carlys B. Vargas is sufficient to raise an issue of fact. That document, which appears to be from a web search, but which is not labeled, indicates that Carmen Maria-Vargas surrendered her plates and includes an ambiguous reference: "INS: 024 PRAETORIAN INS CO" but includes no policy number. Although this document is weak support and the accident report indicates "000" under the insurance code section, the issue of whether PRAETORIAN INSURANCE COMPANY

insured the offending vehicle on the date of the accident will be referred to a Special Referee. Although the amended petition seeks an order regarding discovery, Respondent has consented to provide such discovery.

It is hereby

ORDERED that the issue of whether the alleged offending vehicle was insured by PRAETORIAN INSURANCE COMPANY on the date of the accident shall be referred to a Special Referee to hear and report; and it is further

ORDERED that arbitration is temporarily stayed until the Court confirms or rejects the report of the Special Referee; and it is further

ORDERED that CARMEN MARIA VARGAS, CARLYS B, VARGAS and PRAETORIAN INSURANCE COMPANY added as Respondents, upon Petitioner's (1) service of the Petition and Notice of Petition in accordance with the CPLR and (2) service of a copy of this Decision and Order with notice of entry, together with copies of all papers previously served in this proceeding, within 20 days from the receipt of this decision, and it is further

ORDERED that the caption of this proceeding is amended to reflect inclusion of CARMEN MARIA VARGAS, CARLYS B, VARGAS and PRAETORIAN INSURANCE COMPANY as additional respondents, and, upon

[\* 5]  
Petitioner's service of a copy of this Decision and Order with notice of entry on the Clerk of this Court and the Trial Support Clerk (Room 158), the Clerks shall mark their records to reflect the amendment, and it is further

ORDERED that Petitioner shall serve a copy of this Decision and Order with notice of entry on the arbitrator within 20 days from the receipt hereof; and it is further

ORDERED that on consent, Respondent shall submit to an examination under oath, a physical examination and provide authorizations; and it is further

ORDERED that if Petitioner fails to notice the examination under oath or physical examination or request authorizations, all within 30 days of receipt of this Decision and Order, that discovery shall be deemed waived.

This constitutes the Decision and Order of the Court.

DATED: June 29, 2011

**FILED**

**JUL 13 2011**

NEW YORK  
COUNTY CLERK'S OFFICE

ENTER

J.S.C.

**EMILY JANE GOODMAN**