

Government Empls. Ins. Co. v Sepulveda

2013 NY Slip Op 31066(U)

May 9, 2013

Supreme Court, Suffolk County

Docket Number: 11-27899

Judge: Jeffrey Arlen Spinner

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MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY

I.A.S. PART 21

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GOVERNMENT EMPLOYEES INSURANCE
CO.,

:
: By: Spinner, J.S.C.
: Dated: May 9, 2013

Petitioner,

:
: Index No. 11-27899

- against -

:
: Mot. Seq. # 001 RRH

JOHANI SEPULVEDA and ADRIANA QUIROZ,

:
: Return Date: September 21, 2011
: Adjourned: January 16, 2013

Respondents,

- and -

ALLSTATE INSURANCE COMPANY and
XAVIER W. SPENCER,

Proposed Additional Respondents.
-----X

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This proceeding to stay arbitration of a claim for uninsured motorist benefits filed by respondents Johani Sepulveda and Adriana Quiroz arises out of a motor vehicle accident that occurred in Kings County on September 25, 2010. The accident allegedly happened when a vehicle operated by Sepulveda and insured by petitioner Government Employees Insurance Company ("GEICO") was struck in the rear by a motor vehicle that fled the scene. Quiroz allegedly was riding as a passenger in the Sepulveda action at the time of the collision.

GEICO seeks a permanent stay of arbitration on the ground that respondents do not have a valid claim for uninsured motorist coverage and, therefore, that do not have the right to proceed

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to arbitration under the terms of the policy issued to Sepulveda. GEICO contends its investigation of the accident has revealed the vehicle that struck the Sepulveda vehicle was owned by proposed additional respondent Xavier Spencer and insured by proposed additional respondent Allstate Insurance Company. Alternatively, GEICO seeks a temporary stay pending a hearing on the question of whether the offending vehicle was, in fact, insured. It also seeks an order joining Spencer and Allstate Insurance Company as respondents to the action, and compelling Sepulveda and Quiroz to produce certain evidence and to appear for depositions and physical examinations in the event respondents are entitled to proceed to arbitration. In support of its petition, GEICO submits, among other things, copies of the request for arbitration of respondents' uninsured motorist claim, the police accident report, a vehicle abstract from the Pennsylvania Department of Transportation, and an excerpt of the insurance policy issued to Sepulveda relating to supplementary uninsured/underinsured motorist coverage. Respondents oppose the petition, claiming Allstate Insurance Company repeatedly has denied requests for coverage and has denied its insured's involvement in the accident.

It is well settled that in a proceeding to stay arbitration of an uninsured motorist claim, the claimant's insurer, as the petitioner, bears the initial burden of proving that the offending vehicle was insured at the time of the accident (*see Matter of Metropolitan Prop. & Cas. Ins. Co. v Singh*, 98 AD3d 580, 949 NYS2d 638 [2d Dept 2012]; *Matter of American Intl. Ins. Co. v Giovanielli*, 72 AD3d 948, 900 NYS2d 108 [2d Dept 2010]; *Matter of Lumbermens Mut. Cas. Co. v Quintero*, 305 AD2d 684, 762 NYS2d 83 [2d Dept], *lv denied* 100 NY2d 515, 769 NYS2d 201 [2003]). A prima facie case of insurance coverage may be established by submitting a police accident report, which contains the offending vehicle's insurance code designation (*see Matter of American Intl. Ins. Co. v Giovanielli*, 72 AD3d 948, 900 NYS2d 108; *Matter of AutoOne Ins. Co. v Hutchinson*, 71 AD3d 1011, 898 NYS2d 161 [2d Dept 2010]; *Matter of Liberty Mut. Ins. Co. v McDonald*, 6 AD3d 614, 775 NYS2d 83 [2d Dept 2004]), or by offering proof from the Department of Motor Vehicles (*see Matter of Continental Ins. Co. v Biondo*, 50 AD3d 1034, 857 NYS2d 588 [2d Dept 2008]; *Matter of Eagle Ins. Co. v Tichman*, 185 AD2d 884, 586 NYS2d 1010 [2d Dept 1992]; *Matter of Liberty Mut. Ins. Co. v Horowitz*, 121 AD2d 634, 504 NYS2d 39 [2d Dept 1986]). If the petitioner satisfies its burden, the purported insurer of the offending vehicle, or the claimant when the insurer has not been made a party, must establish either that the offending vehicle was never insured or that the insurance had been cancelled (*see Matter of Government Empls. Ins. Co. v O'Neil*, 74 AD3d 1068, 902 NYS2d 382 [2d Dept 2010]; *Matter of CGU Ins. Co. v Greatheart*, 301 AD2d 649, 753 NYS2d 883 [2d Dept 2003]; *Matter of Globe Indem. Co. v Lawrence*, 210 AD2d 334, 620 NYS2d 83 [2d Dept 1994]).

Here, GEICO failed to meet its burden on the application for a permanent stay of arbitration, as the police accident report, which was prepared by an officer who did not witness the accident, and which does not indicate who provided the information concerning the license plate of the offending vehicle, is not in admissible form (*see Johnson v Lutz*, 253 NY 124, 170 NE 517 [1930]; *Noakes v Rosa*, 54 AD3d 317, 862 NYS2d 573 [2d Dept 2008]; *Murray v*

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Donlan, 77 AD2d 337, 433 NYS2d 184 [2d Dept 1980], *appeal dismissed* 52 NY2d 1071 [1981]). The police accident report also does not list any insurance code. Similarly, the uncertified abstract from the Pennsylvania Department of Transportation does not constitute competent evidence and is insufficient to establish a prima facie case of insurance coverage for the offending vehicle (*see* CPLR 4540 [c]; *People v James*, 4 AD3d 774, 772 NYS2d 151 [4th Dept 2004]; *cf. Matter of Government Empls. Ins. Co. v O'Neil*, 74 AD3d 1068, 902 NYS2d 382; *People v Feliciano*, 54 AD3d 1131, 864 NYS2d 221 [3d Dept 2008]).

As a question of fact exists as to whether the Sepulveda vehicle was struck by an uninsured vehicle, the parties shall appear before the undersigned for a hearing on such issue. Pending the hearing, arbitration of the uninsured motorist claim is temporarily stayed. Petitioner is directed to join Allstate Insurance Company and Xavier W. Spencer as additional respondents to this proceeding. Petitioner further is directed to serve an amended petition on Sepulveda and Quiroz, and to serve a supplemental notice of petition and amended petition on Allstate Insurance Company and Xavier W. Spencer within 30 days of the date of this order. Respondents and additional respondents shall have 30 days from the date of service of the amended petition to serve an answer. In the event petitioner fails to timely serve the supplemental notice of petition and amended petition, the stay of arbitration shall be lifted.

Finally, the application for an order compelling disclosure in the event it is determined respondents are entitled to proceed to arbitration is denied absent any showing by GEICO of extraordinary circumstances warranting court-ordered discovery (*see Matter of Progressive Specialty Ins. Co. v Alexis*, 90 AD3d 933, 934 NYS2d 719 [2d Dept 2011]; *Matter of Travelers Indem. Co. v United Diagnostic Imaging, P.C.*, 73 AD3d 791, 899 NYS2d 641 [2d Dept 2010]).

Accordingly, it is

ORDERED that the petition is granted to the extent that arbitration of respondents' uninsured motorist claim is temporarily stayed pending the joinder of the additional respondents and a hearing to determine whether Allstate Insurance Company insured the offending vehicle at the time of the accident, and is otherwise denied pending a further determination by the court consistent with this decision and order; and it is

ORDERED that petitioner shall join the additional proposed respondents as parties by serving them in the manner set forth above; and it is

ORDERED that petitioner, within 30 days of the date of this decision and order, shall serve upon the additional respondents, in a manner prescribed for service of a summons under CPLR article 3, a copy of this decision and order with notice of its entry, together with a supplemental notice of petition and supplemental petition bearing the caption as amended below; and it is

ORDERED that petitioner, within 30 days of the date of this decision and order, shall serve upon the respondents, in a manner provided for service of papers generally, a copy of this decision and order with notice of its entry, together with a supplemental notice of petition and supplemental petition bearing the caption as amended below; and it is

ORDERED that petitioner, within 30 days of the date of this decision and order, shall serve upon the additional respondents, in a manner prescribed for service of a summons under CPLR article 3, a copy of this decision and order with notice of its entry, together with a supplemental notice of petition and supplemental petition bearing the caption as amended below; and it is further

ORDERED that the petitioner, within 30 days of the date of this decision and order, shall serve upon the clerk of the court, by personal delivery, a copy of this decision and order with notice of its entry; and it is further

ORDERED that the petitioner, within 30 days of the date of this decision and order, shall file with the court copies of all papers so served, together with proof of such service; and it is

ORDERED that the caption is hereby amended to read as follows:

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|---|----------|
| <p>In the Matter of the Application of GOVERNMENT EMPLOYEES INSURANCE COMPANY, to Stay Arbitration,</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">- against -</p> <p>JOHANI SEPULVEDA and ADRIANA QUIROZ,</p> <p style="text-align: right;">Respondents,</p> <p style="text-align: center;">- and -</p> <p>ALLSTATE INSURANCE COMPANY and XAVIER W. SPENCER,</p> <p style="text-align: right;">Additional Respondents.</p> | <p>X</p> |
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and that the clerk of the court shall mark the court's records to reflect the amended caption; and it is further

ORDERED that the parties and their attorneys shall appear for a hearing on July¹⁰, 2013 at 9:30 a.m. in Part 21 of the Supreme Court of the State of New York, County of Suffolk, John J. Cohalan, Jr. Courthouse, 400 Carleton Avenue, Central Islip, New York, to determine whether the vehicle that collided with the Sepulveda vehicle on September 25, 2012 was insured by Allstate Insurance Company at the time of the accident.

Dated: May 9, 2013



J.S.C.
JEFFREY ARLEN SPINETT

_____ FINAL DISPOSITION X NON-FINAL DISPOSITION

TO: ALLSTATE INSURANCE COMPANY
1111 Marcus Avenue
Lake Success, NY 11042

XAVIER W. SPENCER
160 Leisure Lands
East Stoudsburg, PA 18301