

Matter of Adirondack Ins. Exchange v Ortiz
2013 NY Slip Op 33745(U)
July 8, 2013
Sup Ct, Westchester County
Docket Number: 51904/13
Judge: Robert M. DiBella
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To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
WESTCHESTER COUNTY**

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**In the Matter of the Application for an Order
Staying the Arbitration by ADIRONDACK
INSURANCE EXCHANGE,**

Petitioner,

-against-

GUSTAVO ORTIZ, JR.,

Respondent,

-and-

C.I.M. INSURANCE CORP. and THOMAS HUGHES,

Proposed Additional Respondents.
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DIBELLA, J.

The following papers were read and considered on this Notice of Petition for an order granting a permanent stay of arbitration, or, in the alternative, a temporary stay pending a hearing and discovery, pursuant to CPLR Article 75:

- 1) Notice of Petition; Petition; Exhibits A–G; and
- 2) Affirmation in Opposition of Robert J. Berkowitz, Esq.; Exhibits A–E.

Petitioner moves, pursuant to CPLR Article 75, for an order granting a permanent stay of arbitration, or, in the alternative, granting a temporary stay of arbitration pending a hearing on the issues of, *inter alia*, whether the policy of insurance issued by C.I.M. Insurance Corp. to Thomas Hughes was properly in effect and provides coverage for the claim at issue, whether petitioner's disclaimer was proper, and whether respondent has complied with the policy's conditions precedent to arbitration. Respondent opposes the

**DECISION AND ORDER
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petition.¹ The Petition is granted to the extent that a temporary stay of arbitration is granted as set forth herein.

This case arises out of an automobile accident involving respondent Gustavo Ortiz, Jr. that occurred on October 16, 2007. Mr. Ortiz alleges that he was struck by a motor vehicle as he was riding his bike, which caused him to sustain personal injuries. It was determined by Adirondack Insurance Exchange ("Adirondack") that there was no insurance coverage for the alleged motor vehicle involved in this accident.

Petitioner contends that a permanent stay is appropriate because Mr. Ortiz failed to cooperate with Adirondack in the investigation of this matter pursuant to the terms of the insurance policy. In particular, petition asserts that Mr. Ortiz failed to provide Adirondack with an Affidavit of Other Insurance to resolve the potential issue of co-insurance (as it appears that Thomas Hughes, Mr. Ortiz's brother-in-law and co-member of the household, also maintained auto insurance under which this claim could be brought). Further, petitioner asserts that Mr. Ortiz failed to provide full names, address and HIPAA-compliant authorizations for all treating doctors, photographs depicting the damage to the bike, and submit to a physical examination by petitioner's physicians. In the alternative, petitioner contends that a temporary stay should be granted, to order the discovery discussed herein and for a hearing on whether there is other insurance coverage available.

In opposing the Petition, respondent addresses only petitioner's request for a

¹ In opposing the Petition, respondent only addresses the portion of the Petition which seeks a permanent stay of arbitration.

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permanent stay of arbitration and contends that Mr. Ortiz has since responded to petitioner's discovery requests and that petitioner is unable to demonstrate prejudice sufficient to award a permanent stay because a notice of demand for arbitration of uninsured motorist benefits was timely filed.

Petitioner's application is granted to the extent that a temporary stay of arbitration is granted pending a hearing on preliminary issues of coverage, including whether petitioner's disclaimer due to lack of cooperation was proper and whether additional insurance coverage exists. *See Eveready Ins. Co. v. Mack*, 15 AD3d 400 (2d Dep't 2005). Further, it appears that certain conditions precedent as required by the policy have not been met, specifically, that discovery between petitioner and respondent has not fully been completed. Thus, a temporary stay of arbitration pending further discovery is warranted. *See State Farm Mut. Auto. Ins. Co. v. Johnson*, 287 AD2d 640 (2d Dep't 2001); *Allstate Ins. Co. v. Baez*, 269 AD2d 392 (2d Dep't 2000). It appears that, since the filing of the Petition, respondent has responded to certain discovery requests, such as HIPAA-complaint authorizations, but that some discovery remains outstanding, such as a physical examination by petitioner's physicians. If there is any remaining documentary discovery needed, petitioner is directed to serve discovery demands within 20 days of the date of this Decision and Order. Respondent is directed to respond to petitioner's discovery demands within 20 days of receipt of the discovery demands. A physical examination of respondent shall occur on or before August 30, 2013.

Accordingly, it is

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Ordered that the Petition is granted to the extent that a temporary stay is granted and a framed issue hearing is directed of the preliminary issue as to coverage, and the arbitration is stayed pending such hearing, and the parties shall conduct discovery as outlined above; and it is further

Ordered that the parties are directed to appear before the Settlement Conference Part on August 15, 2013 at 9:30 AM in Room 1600 of the Westchester County Courthouse to schedule the framed issue hearing; and it is further

Ordered that the petitioner is directed to file a note of issue and certificate of readiness and make payment of appropriate fees, if any, at least seven days prior to the scheduled hearing date; and it is further

Ordered that petitioner is directed to serve a copy of this decision and order with notice of entry within 10 days of entry upon the attorney for respondent, the arbitrator, and the County Clerk; and it is further

Ordered that petitioner is directed to serve a copy of this decision and order with notice of entry, together with copies of all papers previously served in the proceeding, upon C.I.M. Insurance Corp. and Thomas Hughes, 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, upon service by petitioner of a copy of this decision and order with notice of entry, shall mark the records to reflect the amendment.

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This is the Decision and Order of the Court.

Dated: July 8, 2013
White Plains, New York


Hon. Robert DiBella, JSC

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