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| <b>Matter of Allstate Ins. Co. v Nahom</b>                                                                                                                                                                                                                       |
| 2014 NY Slip Op 30645(U)                                                                                                                                                                                                                                         |
| March 12, 2014                                                                                                                                                                                                                                                   |
| Sup Ct, NY County                                                                                                                                                                                                                                                |
| Docket Number: 650216/2014                                                                                                                                                                                                                                       |
| Judge: Cynthia S. Kern                                                                                                                                                                                                                                           |
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 55

-----X  
In the Matter of the Application of

ALLSTATE INSURANCE COMPANY,

Petitioner,

Index No. 650216/2014

-against-

**DECISION/ORDER**

RONEN NAHOM,

Respondent,

-and-

MATVEI CAB CORP, ALEKSANDR VOLOSHIN,  
FIDUCIARY INSURANCE COMPANY, JULES  
LEVINTHAL, JANET LEVENTHAL, GEICO  
GENERAL INSURANCE COMPANY, MARCAN  
TRANSPORTATION and EDITH MORGAN,

Proposed Additional Respondents.

-----X  
**HON. CYNTHIA S. KERN, J.S.C.**

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion  
for : \_\_\_\_\_

| Papers                                               | Numbered |
|------------------------------------------------------|----------|
| Notice of Motion and Affidavits Annexed.....         | <u>1</u> |
| Notice of Cross Motion and Answering Affidavits..... | <u>2</u> |
| Affirmations in Opposition to the Cross-Motion.....  | <u>3</u> |
| Replying Affidavits.....                             | <u>3</u> |
| Exhibits.....                                        | <u>4</u> |

Petitioner moves for an order pursuant to CPLR § 7503 (c) permanently staying the  
arbitration initiated by respondent, or, in the alternative, a temporary stay of arbitration and an  
order directing a preliminary hearing to determine whether respondents were involved in an

accident with an uninsured motor vehicle. The petitioner also seeks to add the proposed additional respondents as named above. Finally, in the event a stay is not otherwise granted, petitioner seeks to temporarily stay the arbitration so that it may obtain discovery from respondent. To the extent described below, the instant petition is granted.

The instant action arises from a four vehicle car accident that occurred on July 11, 2011 (the "Accident"). On said date, a vehicle owned and operated by respondent ("vehicle #2") and insured with petitioner was rear-ended by a vehicle owned by proposed additional respondent Matvei Cab Corp., operated by proposed additional respondent Aleksandr Voloshin ("Voloshin") ("vehicle #1") and insured by proposed additional respondent Fiduciary Insurance Company of America ("Fiduciary"). Specifically, according to the police report "vehicle #1 did rear [end] vehicle #2 causing vehicle #2 to rear end vehicle #3. . . . causing vehicle #3 to rear end vehicle #4." However, in his deposition Mr. Voloshin stated that he was initially hit by a gray van that immediately fled the scene.

On or about November 13, 2014, respondent filed a demand for arbitration seeking uninsured motorist benefits from petitioner for the Accident pursuant to the policy issued by petitioner. Specifically, in the demand for arbitration, respondent listed that the Accident was a "Hit-and-Run." Petitioner now brings the instant petition to permanently stay the arbitration on the ground that the alleged offending vehicle at the time of the Accident was insured. In the alternative, petitioner seeks a temporary stay pending a framed issue hearing on the issue of insurance coverage. Respondent has opposed the petition on the ground that if Volosin's testimony is true, this is hit and run case entitling him to uninsured motorist benefits. Additionally, proposed additional respondents Mar-Can Transportation, Sparta Insurance

company, and Edith Morgan have opposed the portion of the petition seeking to add them as additional proposed respondents on the ground that there are no issues as to coverage in regards to these parties or whether the car owned by Mar-Can Transportation and operated by Edith Morgan at the time of the Accident was the vehicle at fault.

An insurance carrier seeking to stay the arbitration of an uninsured motorist claim has the burden of demonstrating that the offending vehicle was actually insured at the time of the accident at issue. *Matter of Allstate Ins. Co. v. Holmes*, 173 A.D.2d 260 (1<sup>st</sup> Dept 1991). Information contained in a police report can be used as *prima facie* proof that the vehicle is insured. *National Grange Mutual Ins. Co. v. Diaz*, 111 A.D.2d 700 (1<sup>st</sup> Dept 1985). In order to be entitled to a hearing, the petitioner seeking to stay the arbitration has the "burden of establishing the existence of evidentiary facts, sufficient to conclude that there is a genuine preliminary issue which requires a trial and justifies a stay." *National Grange Mutual Ins. Co.*, 111 A.D.2d at 700. If issues of fact exist, the court must hold a hearing before it can decide whether the arbitration should proceed or be stayed. *Country-Wide Ins. Co. v. Leff*, 78 A.D.2d 830 (1<sup>st</sup> Dept 1980). Where no issue of fact exists as to whether the offending vehicle was uninsured, no hearing is necessary and the stay will be denied. *Application of Country-Wile Ins. Co. v. Manning*, 96 A.D.2d 471 (1<sup>st</sup> Dept 1983); *Application of Amica Mut. Ins. Co. v. Reaves*, 70 A.D.2d 811 (1<sup>st</sup> Dept 1979).

In the instant case, petitioner's application for a temporary stay of the arbitration pending a framed issue hearing is granted as the record before the court contains issues of fact as to whether the offending vehicle in the Accident was uninsured. While the police report annexed to petitioner's application demonstrates that vehicle #1, insured by Fiduciary, was the vehicle

responsible for initiating the chain reaction, such fact is put into dispute by Voloshin's deposition testimony. According to Voloshin's deposition testimony, he was initially struck by a van that fled the scene of the Accident. Thus, an issue of fact exists as to whether the Accident was caused by an uninsured vehicle and a framed issue hearing is necessary to make a final determination on the issue of applicable insurance coverage in this matter.

However, the portion of petitioner's application to add proposed additional respondents Mar-Can Transportation, Sparta Insurance company, Edith Morgan, Jules Leventhal, Janet Leventhal, and GEICO General Insurance Company is denied as said parties are not necessary to make a determination of the applicable insurance coverage at issue herein.

Finally, the court notes that in the event this court determines that this is a valid uninsured motorist claim, the petitioner is entitled to have the respondent submit to a physical examination and an examination under oath at that time. Accordingly, it is hereby

ORDERED that the arbitration herein be temporarily stayed pending the outcome of a framed issue hearing; and it is further

ORDERED that petitioner is hereby granted leave to add the proposed additional respondents Matvei Cab Corp., Aleksandr Voloshin and Fiduciary Insurance Company of America to this action; and it is further

ORDERED that this matter be set down for a framed issue hearing before this court at 60 Centre Street, Rm 432 on June 3, 2014 at 11:00 a.m. to determine the issue of applicable insurance coverage in this matter. This constitutes the decision and order of the court.

Dated: 3/12/14

Enter:                     CK                    

J.S.C.  
CYNTHIA S. KERN  
J.S.C.