

Matter of Government Empls. Ins. Co. v Cole

2014 NY Slip Op 31568(U)

June 19, 2014

Supreme Court, New York County

Docket Number: 650106/14

Judge: Michael D. Stallman

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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**

PRESENT: Hon. MICHAEL D. STALLMAN
Justice

PART 21

In the Matter of the Application of
GOVERNMENT EMPLOYEES INSURANCE COMPANY
to Stay Arbitration,

INDEX NO. 650106/14

MOTION DATE 4/21/14

Petitioner,

- against -

MOTION SEQ. NO. 001

BAMIWOLE COLE,

Respondent.

The following papers, numbered 1 to 3, 5, 8-9, were read on this petition to stay arbitration

Notice of Petition; Petition; Exhibits A; B

█ No(s). 1; 2; 3; 5

Affirmation in Opposition; Exhibit A

█ No(s). 8; 9

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

Upon the foregoing papers, it is **ORDERED** that a Judicial Hearing Officer ("JHO") or Special Referee shall be designated to hear and report to this Court (or to hear and determine, upon stipulation of the parties) the following individual issues of fact, which are hereby submitted to the JHO or Special Referee for such purpose:

- 1) the issue of whether the vehicle driven by respondent Bamiwole Cole made physical contact with a hit-and-run vehicle on April 6, 2013;
 - 2) the issue of whether respondent timely reported the hit-and-run collision to the police; and
 - 3) any discovery disputes concerning the above-mentioned factual issues;
- and it is further

ORDERED that the powers of the JHO or Special Referee shall not be limited further than as set forth in the CPLR; and it is further

(Continued . . .)

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ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119 M, 646-386-3028 or spref@courts.state.ny.us) for placement at the earliest possible date upon the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part, shall assign this matter to an available JHO or Special Referee to hear and report as specified as above, and it is further

ORDERED that counsel shall immediately consult one another and counsel for plaintiff/petitioner shall, within 30 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email an Information Sheet (available at <http://www.courts.state.ny.us/supctmanh/refpart-infosheet-10-09.pdf>) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence as they may seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320 [a]) and, except as otherwise directed by the assigned JHO or Special Referee, the trial of the issues specified above shall proceed day to day until completion; and it is further

ORDERED that any motion to confirm or disaffirm the Report of the JHO or Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts; and it is further

ORDERED that, unless otherwise directed by this Court in any Order that may be issued together with this Order of Reference to Hear
(Continued . . .)

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and Report, the issues presented in any motion identified in the first paragraph hereof shall be held in abeyance pending submission of the Report of the JHO or Special Referee and the determination of this Court thereon.

This petition to stay an uninsured motorist arbitration arises out of a hit-and-run motor vehicle collision that allegedly occurred on April 6, 2013 on Interstate 695 in Baltimore, Maryland. Petitioner is the insurer of the vehicle owned and operated by respondent Bamiwole Cole.

Petitioner seeks a permanent stay of the arbitration, or in the alternative a temporary stay pending a framed issue hearing, on the grounds that respondent failed to comply with a condition precedent to arbitration, namely reporting the alleged hit-and-run collision to the police within 24 hours or as soon as reasonably possible.

The hit-and-run provision of petitioner's automobile policy requires in pertinent part, "[t]he insured or someone on the insured's behalf shall have reported the accident within 24 hours or as soon as reasonably possible to a police, peace or judicial officer or to the Commissioner of Motor Vehicles. . . ." (Petition Ex. B.)

Respondent alleges that he immediately called 911 after the hit-and-run collision to report the collision, then called petitioner to report the collision and request assistance. (Blyth Opp. Affirm. Ex. A [Cole Aff.] ¶¶ 6-7.) He informed petitioner that his vehicle was totaled, he had called the police, and he was waiting for police to arrive to the scene of the collision. (*Id.* ¶ 9.) Approximately 20 minutes later, a tow truck from USA Towing arrived to the scene. (*Id.*) Respondent explained to the driver of the tow truck what happened and that he was waiting for the police to arrive. (*Id.*) The driver prepared respondent's vehicle to be towed and then prepared to leave the scene. (*Id.* ¶ 10.) Respondent "was not comfortable waiting on the side of the Interstate for the police to come" and left with the tow truck, his only means of transportation from the scene. (*Id.*) Respondent claims he attempted to obtain the 911 call record from his cell phone provider

(Continued . . .)

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and the police. (*Id.* ¶ 11.)


Therefore, there are triable questions of fact as to whether respondent's vehicle made physical contact with a hit-and-run vehicle and whether respondent reported the hit-and-run collision within 24 hours or as soon as reasonably possible. These issues are hereby referred to a JHO or Special Referee to hear and report (or to hear and determine, upon stipulation of the parties).

Finally, petitioner seeks an examination under oath of respondent, physical examinations, and medical authorizations. To the extent that this discovery was sought in connection with the uninsured motorist arbitration, such discovery, if necessary, should not occur until after the conclusion of the hearing directed herein. (*See Matter of Interboro Mut. Indem. Ins. Co. v Wiener*, 267 AD2d 310 [2d Dept 1999].)

To the extent that the parties wish to engage in discovery on the framed issues, they must arrange for the discovery prior to the scheduling of the framed issue hearing. Any discovery disputes are also referred to the JHO or Special Referee.

HON. MICHAEL D. STALLMAN

Dated: 6/19/14
New York, New York


_____, J.S.C.

- 1. Check one:.....
- 2. Check if appropriate:..... PETITION IS:
- 3. Check if appropriate:.....

- CASE DISPOSED NON-FINAL DISPOSITION
- GRANTED DENIED GRANTED IN PART OTHER
- SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE