

Matter of Progressive Cas. Ins. v Hill

2015 NY Slip Op 30234(U)

January 9, 2015

Supreme Court, New York County

Docket Number: 653193/2014

Judge: Cynthia S. Kern

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----x

In the Matter of the Application of

PROGRESSIVE CASUALTY INSURANCE,

Petitioner,

Index No. 653193/2014

-against-

DECISION/ORDER

KOFI A. HILL,

Respondent,

-and-

NATIONWIDE PROPERTY & CASUALTY INSURANCE
COMPANY, GEICO INDEMNITY COMPANY and
PAUL PHILDOR,

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>4</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 respondent was involved in an accident with an uninsured motor vehicle. For the reasons set forth below, the petition is

granted.

The relevant facts are as follows. On August 26, 2013, respondent Kofi A. Hill (“Hill”) was involved in a motor vehicle accident with a vehicle driven and owned by proposed additional respondent Paul Phildor (“Phildor”) on the Grand Central Parkway service road near Edgerton Road in Queens County. According to the Police Report, Phildor’s vehicle was insured under Policy Number “5345V475995.” A review of a Virginia Carrier Discovery Report indicated that said policy number is associated with either proposed additional respondent Nationwide Property & Casualty (“Nationwide”) or proposed additional respondent GEICO Indemnity Company (“GEICO”). As such, Hill submitted a claim to Nationwide for coverage, which was denied. Based on Nationwide’s denial, Hill initiated a claim against petitioner, his insurance carrier, for uninsured motorist benefits and subsequently sought arbitration. Petitioner now brings the instant petition to stay the arbitration pending a framed issue hearing to determine whether Phildor’s vehicle was actually insured at the time of the accident. GEICO has submitted opposition demonstrating that it did not provide coverage for Phildor’s vehicle at the time of the accident. Thus, petitioner no longer seeks the addition of GEICO to this proceeding.

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 (1st 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 (1st 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 (1st Dept 1980).

In the present 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. The police report clearly indicates that Phildor’s vehicle was insured under policy number 5345V475995, and a further search revealed that said policy number was associated with a Nationwide policy. However, Nationwide denied Hill’s claim. As neither Phildor nor Nationwide has opposed the present petition, it is unknown whether Nationwide’s denial was proper. Thus, a framed issue hearing is necessary to determine the question of whether Phildor’s vehicle was insured by Nationwide at the time of the accident.

Additionally, 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 comply with pre-arbitration discovery requests 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 Nationwide and Phildor 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 February 10, 2015 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: 1/9/15

Enter: CK

J.S.C.

CYNTHIA S. KERN
J.S.C.