

<b>American Tr. Ins. Co. v Segura</b>
2019 NY Slip Op 33763(U)
December 27, 2019
Supreme Court, New York County
Docket Number: 655152/2019
Judge: Carol R. Edmead
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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART IAS MOTION 35EFM

-----X

AMERICAN TRANSIT INSURANCE COMPANY,  
  
Plaintiff,

INDEX NO. 655152/2019

MOTION DATE 11/13/2019

- v -

IVONNE SEGURA, AZRA CIRKIC, NATIONWIDE  
AFFINITY COMPANY OF AMERICA

MOTION SEQ. NO. 001

Defendant.

**DECISION + ORDER ON  
MOTION**

-----X

HON. CAROL R. EDMEAD:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17

were read on this motion to/for STAY

Based on these papers and the decision below, it is

ORDERED that the issue of whether Respondent's alleged loss was caused by the vehicle operated and insured by Proposed Additional Respondents is referred to a Judicial Hearing Officer to Hear and Determine; and it is further

ORDERED that counsel for Petitioner shall serve a copy of this order with notice of entry on all parties and the Special Referee Clerk, Room 119M, within 30 days of entry to arrange a date; and it is further

ORDERED that the arbitration is stayed pending a determination of the issue noted herein; and it is further

ORDERED that Petitioner shall serve a copy of this order with notice of entry upon all parties within 20 days of entry.

12/26/2019

DATE

  
HON. CAROL R. EDMEAD  
CAROL R. EDMEAD, J.S.C. J.S.C.

CHECK ONE:

CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
 REFERENCE

In this Article 75 Action, American Transit Insurance Company (Petitioner) moves for a permanent or temporary stay of an arbitration proceeding pending a Framed Issue Hearing.

Ivonne C. Segura (Respondent) opposes the motion.

### BACKGROUND FACTS

This action arises out of a car accident that occurred on February 2, 2018, when Respondent sustained injuries in a collision involving a motorist that fled the scene. At the time of the accident, Respondent's vehicle was insured by Petitioner. The policy contained a New York Supplemental Uninsured Motorist Endorsement whereby Petitioner agreed to pay certain sums for injuries to Respondent arising out of an accident involving an uninsured automobile (NYSCEF doc No. 1, ¶ 8). On August 19, 2019, Respondent filed a Demand for Arbitration pursuant to her policy. The police report of the accident notes that the driver who hit Respondent fled the scene. A DMV search for the possible license plate number matching the Vehicle Identification Number listed on the police report indicates that the car is owned by Proposed Additional Respondent Azra Cirkic and is insured by Proposed Additional Respondent Nationwide Affinity Company of America ("Nationwide Affinity") (*id.* at ¶ 10). As there is no evidence that the automobile was stolen or lost prior to the date of the accident, Petitioner contends that the adverse vehicle was not uninsured, and the arbitration should thus be permanently stayed. In the alternative, Petitioner requests a temporary stay pending the results of a Framed Issue Hearing. Should Respondent prove that the adverse driver was uninsured, Petitioner requests that Respondent be compelled to comply with certain pre-arbitration discovery conditions.

In opposition, Respondent argues that Petitioner's registration number search was conducted on the wrong automobile. According to Respondent, Petitioner's search was

conducted on a 2004 Cadillac with the New York registration number HSJ4486, but the police report of the accident identifies a New Jersey 2004 Cadillac with the registration number 059697R (NYSCEF doc No. 10, ¶ 10). The New Jersey vehicle is uninsured according to Respondent's search (*id.* at ¶ 8). Respondent further contends that the New York Cadillac Petitioner claims was involved is also not insured, as Nationwide Affinity's policy expired in December 2016 (*id.* at ¶ 11). Respondent accordingly contends that the issue should immediately proceed to arbitration.

### DISCUSSION

A party seeking a stay of arbitration pursuant to Article 75 has the burden of establishing a "genuine triable issue" that justifies the relief. *Matter of Empire Mut. Ins. Co. (Zelin)*, 120 AD 2d 365 (1st Dept 1986). When such an issue exists, "the appropriate procedure is to stay the arbitration pending a trial of the threshold issue." *Id.* If the moving party cannot establish any preliminary triable matter, the stay will not be granted. It is well established that an insurer is entitled to obtain all relevant information to evaluate claims prior to an arbitration hearing. *Progressive Ne. Ins. Co. v. Vandusen*, 22 Misc. 3d 1128(A) (Sup. Ct. 2009). To establish its entitlement to a permanent stay of arbitration, the insurer herein must meet its burden by showing that a hit-and-run accident did not occur. *See Travelers Property & Cas. Co. of America v. Mayen*, 82 AD3d 402 [1st Dept 2011] (a request for a permanent stay of arbitration is properly denied where the insurer fails to meet its burden of proof that a hit run accident did not occur), *citing Matter of Empire Mut. Ins. Co. [Greaney-National Union Fire Ins. Co. of Pittsburgh]*, 156 AD2d 154, 155, [1989]).

The issue of whether the loss sustained by Respondent was caused by an uninsured vehicle, in that physical contact occurred, the identity of the owner and operator of the offending

vehicle could not be ascertained, and that Respondent's efforts to ascertain such identity were reasonable, are normally circumstances that would warrant a hearing (*see Hanover Ins. Co. v Lewis*, 57 AD3d 221, 868 NYS2d 640 [1st Dept 2008]). It is undisputed that "[p]hysical contact [with an uninsured vehicle] is a condition precedent to the arbitration of this uninsured motorist claim" (*Hanover Ins. Co. v Lewis*, 57 AD3d 221, 868 NYS2d 640 [1st Dept 2008] *citing Matter of Empire Mut. Ins. Co. [Zelin]*, 120 AD2d 365, 502 NYS2d 20 [1986]). Thus, an issue of fact regarding whether the adverse motorist was uninsured at the time of the accident normally warrants a hearing before the matter can proceed to arbitration.

Here, a Framed Issue Hearing is a necessary precondition to the arbitration sought by Petitioner as there is a question of fact as to the identity of the driver that caused the accident. A hearing is thus necessary to first establish, as a preliminary matter, whether the New Jersey or New York licensed vehicle was involved in the accident. Once the identity of the adverse vehicle has been determined, it must be determined whether the adverse vehicle was uninsured at the time of the accident. Petitioner alleges that the vehicle was insured by Proposed Additional Respondent Nationwide Affinity at the time of the accident. Respondent argues that, even if the vehicle involved was the one owned and insured by Proposed Additional Respondents, it was still uninsured as Nationwide Affinity's policy had expired prior to the accident. Petitioner submit "DMV Insurance Expansion Activity Report," which raises a question of fact as to this issue (NYSCEF doc No. 007) These matters must be adjudicated before the matter can proceed to arbitration.

Regarding Petitioner's contentions that Respondent has not complied with necessary conditions precedent to the arbitration, it should be noted that information disclosures can still be conducted prior to arbitration hearings, even in the absence of a permanent stay, if such

disclosure is warranted by the circumstances (*Vandusen*, 22 Misc. 3d 1128[A]). If further disclosures and examinations are truly necessary for arbitration, as Petitioner claims, Respondent should of course comply and cooperate. The Court, however, will not further delay the arbitration beyond the time necessitated for the Framed Issue Hearing as Respondent served her demand months ago and Petitioner has already had sufficient time to conduct discovery.

### CONCLUSION

Based on the foregoing, it is hereby

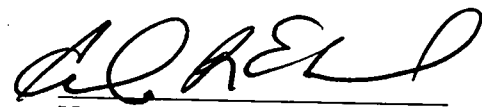
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Dated: December 27, 2019



Hon. Carol R. Edmead, J.S.C.

**HON. CAROL R. EDMEAD**  
J.S.C.