SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. W. FRANC PERRY** **PART** **IAS MOTION 23EFM**

Justice

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METROPOLITAN CASUALTY INSURANCE COMPANY D/B/A METLIFE AUTO & HOME

Petitioner,

- v -

SANDRA SULLIVAN,

Respondent.

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INDEX NO. 655429/2019

MOTION DATE 03/05/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20

were read on this motion to/for STAY.

This matter involves a dispute regarding insurance coverage under an automobile insurance policy. Petitioner, Metropolitan Casualty Insurance Company d/b/a MetLife Auto & Home (MetLife and/or petitioner), files this application (NYSCEF Doc. No. 1) seeking, among other things, a stay of the arbitration by respondent, Sandra Sullivan (Sullivan and/or respondent), pursuant to an arbitration clause in the automobile insurance policy between MetLife and Vilma Ramirez (Ramirez), the policyholder and daughter of Sullivan. Pursuant to her counsel's affirmation in opposition to the MetLife Petition, Sullivan opposes MetLife's request to stay arbitration (NYSCEF Doc. No. 10). For the reasons stated herein, the relief requested in the MetLife Petition is granted to the extent set forth below.

Background

MetLife is a corporation authorized to transact insurance business in, among other states, the State of New York (NYSCEF Doc. No. 1, ¶ 2). MetLife issued to Ramirez, a Florida resident, the subject automobile insurance policy (NYSCEF Doc. No. 3), pursuant to Florida law,

with effective dates of January 4, 2011 to January 4, 2012; the Policy also provides the terms for uninsured and underinsured motorists claims under an endorsement (NYSCEF Doc. No. 1, ¶ 3). The Policy covers a 2002 Nissan motor vehicle, bearing a Florida license plate, which is registered to Ramirez (*id*., ¶¶ 4-5).

On July 4, 2011, Sullivan was a passenger in the subject vehicle, which was driven by Glenville Gardner at the time, when it was involved in an automobile accident in Brooklyn, New York (*id*.). On the date of the accident, Sullivan was an "insured" under the Policy and a "relative" of policyholder Ramirez, as defined in the Policy, and was using the vehicle with the permission of the policyholder (*id.*, ¶ 7). Suit was commenced by Sullivan, in September 2011, against Ramirez, among others, seeking compensation for bodily injuries (NYSCEF Doc. No. 10, ¶¶ 4-5). Prior thereto, on July 13, 2011, Sullivan served on MetLife a notice of possible underinsured motorist claim (*id.*, ¶ 14; referencing NYSCEF Doc. No. 11). On April 9, 2019, MetLife "agreed to waive subrogation and consented to settle" Sullivan's claim under the Policy, which prompted her to discontinue the underlying litigation against all parties, including Ramirez (*id*., ¶ 15; referencing NYSCEF Doc. No. 12). On May 6, 2019, MetLife "changed course" and advised Sullivan that her claim was time-barred under Florida's five-year statute of limitations, "which began accruing on the date of the accident" (*id*., ¶¶ 5 and 16; referencing NYSCEF Doc. No. 13). Pursuant to the terms of the Policy, on August 26, 2019, Sullivan served MetLife with a demand for arbitration to proceed with a settlement of her claim (*id*., ¶ 6; NYSCEF Doc. No. 1, ¶ 8).

In its Notice of Petition (NYSCEF Doc. No. 2), MetLife seeks an order staying the arbitration pursuant to CPLR 7502 and 7503; transferring venue of the arbitration to a proper venue in Florida; directing Sullivan to provide all discovery, as requested by MetLife, in

accordance with the terms of the Policy; and applying Florida's statute of limitations to dismiss Sullivan's claim against MetLife.

Discussion

The instant application seeks, among other things, to stay an arbitration proceeding. It is well-settled that on an initial application for a stay of arbitration, "the burden rests on the party seeking the stay to establish the existence of evidentiary facts, sufficient to conclude that there is a genuine preliminary issue" (*Matter of Progressive Specialty Ins. Co. v Guzmarino*, 170 AD3d 416, 417 [1st Dept 2019] [application denied because petitioner's submissions consisted of mere conclusory allegations]).

MetLife argues that a stay of arbitration is warranted in this matter because it is entitled to conduct discovery in connection with Sullivan's claim "in order to conduct a complete evaluation of the claim" (NYSCEF Doc. No. 1, ¶ 12). Specifically, MetLife argues that, pursuant to the "General Policy Conditions" stated in the Policy, Sullivan is required to comply with MetLife's requests for, among other things, "current HIPPAA compliant authorizations" to obtain medical reports in connection with her injuries, "examination under oath" to fully explore the facts of the accident, and "independent medical examinations" that are necessary to establish a proper defense in an arbitration (*id.*, ¶¶ 13-15). As such, MetLife requests that this court issue an order directing Sullivan to provide all requested documentary discovery, to appear for an examination under oath, and to appear for physical examinations that are deemed necessary in the defense of her underinsured claim in the arbitration (*id.*, ¶¶ 16-18).

In her opposition, Sullivan contends that while she is "not adverse to a temporary stay of arbitration for the sole purpose of exchanging relevant discovery which has not previously been produced, the items requested have already been provided to MetLife" (NYSCEF Doc. No. 10, ¶

31). Specifically, she contends that she has already undergone an examination under oath; that she has provided MetLife with a complete set of medical authorizations, records and photographs; and that MetLife's request for additional independent examinations are duplicative (*id.*, ¶¶ 32-34; referencing annexed exhibits to support her contention). Notably, at the end of her opposition papers, Sullivan "consents to a temporary stay of arbitration for the sole purpose of exchanging relevant discovery which has not already been disclosed" (*id.*, ¶ 35).

In its reply (NYSCEF Doc. No. 20), MetLife argues that the examination under oath was conducted more than eight years ago; that MetLife is entitled to "current" medical records and authorizations for all treatments related to the alleged injuries "from the date of loss to the current date" because it "should not have to rely upon those records which Respondent chooses to provide, and the self-serving evaluation of Respondent's counsel;" and that pursuant to the terms of the Policy, Sullivan must "consent to be examined by physicians chosen and paid by [MetLife] when, and as often as, [MetLife] reasonably may require" (NYSCEF Doc. No. 20, ¶¶ 14-16).

MetLife's application seeking a stay of arbitration to obtain discovery in connection with Sullivan's underinsured claim is granted.

In addition to seeking a stay of arbitration, MetLife requests that this court apply Florida law to dismiss Sullivan's underinsured claim based on Florida's five-year statute of limitations (NYSCEF Doc. No. 1, ¶ 19). MetLife asserts that the underinsured claim is created pursuant to the Policy, a contract negotiated under Florida law between MetLife and Ramirez, a resident of Florida (*id.*, ¶ 21). Because the claim accrued on the date of the accident, July 4, 2011, and Florida's statute provides a five-year limitations period, MetLife asserts that Sullivan's claim expired on July 4, 2016, which was more than three years before her demand for arbitration was

served upon MetLife on August 26, 2019 (*id*.; citing Florida Statutes, Chapter 95, section 95.11 [2][b] and *Geico Gen. Ins. Co. v Graci,* 849 So.2d 1196 [Fla D Ct of Appeal 2003] [underinsured claim accrues on the date of accident]). MetLife also points out that under New York law, an underinsured claim "accrues from the time the underlying bodily injury claim is resolved" (*id.*, ¶ 21; without citing New York caselaw). According to MetLife, because there is a conflict between Florida and New York law in determining the accrual date of an underinsured claim, a choice of law analysis must be undertaken in this matter (*id.*, ¶¶ 20-21; citing, among other cases, *Matter of Allstate Ins. Co. v Stolarz*, 81 NY2d 219 [1993] [*Stolarz*] [the first step in a case presenting a potential choice of law issue is to determine whether there is an actual conflict between the laws of the relevant jurisdictions]).

Stolarz, the principal case relied on by MetLife, involved an underinsured claim arising out of an automobile insurance policy, and the Court of Appeals was asked to determine whether New Jersey or New York law should apply to such a claim. Stolarz, the respondent, was injured in a two-car accident in New York while driving in a company car leased by her employer, The Blue Cross/Blue Shield of New Jersey, and the car was registered in New Jersey and insured by NJM, a New Jersey insurance company (81 NY2d at 222). The carrier insuring the other vehicle paid Stolarz $20,000, the liability limit of its insured's policy (id.). When Allstate, the insurer of Stolarz's personal car, disputed the amount payable under its policy for underinsurance coverage, Stolarz served a demand for arbitration and Allstate commenced a special proceeding in New York to stay the arbitration (*id*.). NJM also disputed the amount payable under its policy for underinsured coverage and joined in the proceeding to seek declaratory relief fixing the rights and obligations of the parties (*id*.).

NJM's policy contained a single limit of "uninsurance/underinsurance coverage" in the amount of $35,000, and pursuant to New Jersey law, the policy stated that any amount payable thereunder must be reduced by all sums paid by anyone who is legally liable (*id*. at 222-223). Thus, NJM argued that it was entitled to offset $20,000 (amount collected by Stolarz from the other driver's insurer) from the $35,000 policy limit (*id*. at 223). Stolarz contended that under New York case law, *Matter of United Community Ins. Co. v Mucatel*, 127 Misc2d 1045 (S Ct, NY County 1985), affd 119 AD2d 1017 (1st Dept 1986) (*Mucatel*), the offset clause in NJM's policy was void and demanded $35,000 without reduction (*id*. at 1046).

On appeal, the Court of Appeals noted that *Mucatel* involved an underinsurance clause, and the *Mucatel* court held that policies containing such a clause were "misleading and ambiguous" because the stated policy limit would never be paid in full (*id.*, 81 NY2d at 223). The Court of Appeals also noted that the NJM policy was written with a single limit of un/underinsurance, and "because there are circumstances where the stated limit would be fully paid," the NJM policy "does not present a similar deception to that identified in *Mucatel*," and therefore there was "no conflict between New York and New Jersey law, and under the law of either jurisdiction, the [NJM] policy should be construed as written" (*id*. at 224-225). The Court further noted that because "the dissent and both lower courts conclude that there is a conflict," it would address the choice of law issue to show that, even assuming there was a conflict, New Jersey law still governed (id. at 225).

The Court observed that automobile insurance is "highly regulated," as it implicates "both the private economic interests of the parties and governmental interests in the enforcement of its regulatory scheme" (*id.* at 226-227). As such, the Court "may properly consider State interests to determine whether to apply New York law and void the [NJM policy's] express

terms or apply New Jersey law and enforce the contract as written" (*id*. at 227). The Court also observed that the State interest in *Mucatel* was that consumers buying insurance in New York "should not be deceived by misleading policy limits," but that concern was irrelevant in the case before it because the NJM policy was sold in New Jersey by a New Jersey insurer to a New Jersey insured, and the insurance clause was written to conform to New Jersey law (*id.*). Therefore, the Court concluded that "New York has no governmental interest in applying its law to this dispute and New Jersey law must be applied" (*id.*).

The Court further observed that the same result would be reached under a "grouping of contacts" analysis that "does not consider State interests" (*id.*). The Court noted that when the "significant contacts" were considered in the subject contract (not tort) dispute, "it is plain that this dispute overwhelmingly centers on New Jersey" (*id.*). The Court then cited the Restatement to enumerate the "generally significant" contacts: "the place of contracting, negotiation and performance; the location of the subject matter of the contract; and the domicile of the contracting parties" (*id.*; citing Restatement [Second] of Conflicts of Laws, section 188[2]). Applying the undisputed facts to the enumerated factors, the Court concluded that "four of the five factors identified in the Restatement plainly point to New Jersey law" (*id*. at 227-228). Importantly, the Court also noted that, any "reliance on New York as the situs of the accident and the place where Stolarz [a nonparty to the contract] and the other driver lived confuses the contacts that might be significant in a tort case with those that are material in a contract dispute" (*id*. at 228). In conclusion, the Court held that there was "no actual conflict between the law of New York and New Jersey, and in any event New Jersey law would apply here" (*id*. at 229).

Adhering to the teachings of the Court in *Stolarz* and applying the "grouping of contacts" analysis, MetLife argues that Florida law, including its statute of limitations, must be applied to

the instant matter because: the contract or Policy was made in Florida; the Policy was negotiated in Florida between Ramirez, a Florida resident, and MetLife, which is licensed to do business in Florida; the Policy was written to conform to the laws of Florida, including the endorsement thereto; and the subject matter of the Policy, the vehicle at issue, does not have a fixed location but is registered in Florida (NYSCEF Doc. No. 1, ¶¶ 22-27). Thus, MetLife argues that four of five factors identified by the Court and in the Restatement, point to the application of Florida law (*id*., ¶ 27). MetLife further argues that Florida adheres to the rule of *lex loci contractus*, which means applying the law of the state where the contract is executed to govern contract disputes (*id*., ¶ 29, citing *Lumbermens Mut. Casualty Co. v August*, 530 So.2d 293, 295 [Fla. 1988] [un/underinsurance motorists benefit issues governed by the laws of the place of contract]). In conclusion, MetLife argues that applying Florida's five-year statute of limitations to Sullivan's underinsured claim requires dismissal of the action because it is time barred (*id*., ¶ 30).

In opposition, Sullivan contends, without addressing the Court's ruling in *Stolarz*, that MetLife's choice of law analysis is "entirely misplaced" (NYSCEF Doc. No. 10, ¶ 8). In particular, she contends that under New York choice of law principles, "contractual choice of law provisions apply solely to substantive issues," and that the "only conflicting statute cited by MetLife concerns a statute of limitations question, which is unequivocally a procedural issue that is not subject to a choice of law analysis" (*id.*). As such, respondent contends that "New York statute of limitations rules govern, and the case cannot be dismissed as time-barred" (id.). Respondent cites to two Court of Appeals decisions (and various appellate court decisions) for support: *Portfolio Recovery Assoc., LLC v King*, 14 NY3d 410 (2010) (*King*), and 2138747 *Ontario, Inc. v Samsung C&T Corp.*, 31 NY3d 372 (2018) (*Samsung*).

More specifically, *King* involved a dispute arising under a credit card agreement where the successor-in-interest to the lender sued the borrower for a balance due thereunder, and the borrower argued that the suit was untimely based upon the application of CPLR 202, New York's "borrowing statute" (*King*, 14 NY3d at 415). Because the defendant never resided in Delaware, the state of incorporation of the lender, and because there was no indication in the case law that Delaware intended for its tolling provision to apply to a nonresident, the Court held that Delaware's tolling provision did not extend the three-year statute of limitations, even though the agreement contained a standard contractual choice of law clause stating that it would be governed by Delaware law (*id*. at 417).

In *King*, the Court stated that "[c]hoice of law provisions typically apply to only substantive issues" and that "statutes of limitations are considered procedural because they are deemed as pertaining to the remedy rather than the right" (*id.* at 616; internal citations and internal quotation marks omitted). On the other hand, in *Samsung*, a case involving a dispute arising under the parties' non-disclosure agreement (NDA) which contained a contractual choice of law clause stating that it would be governed by and enforced pursuant to New York law, the defendant moved to dismiss the complaint arguing that the plaintiff's claim, when applied pursuant to CPLR 202, was time-barred under Ontario's two-year statutes of limitations (*Samsung*, 31 NY3d at 375). The Court in *Samsung*, relying upon the holding in *King*, observed that the addition of the word "enforced" to the NDA's choice of law clause "does not demonstrate the intent of the contracting parties to apply solely New York's six-year statute of limitations in CPLR 213 (2) to the exclusion of CPLR 202," but instead the word "evinces the parties' intent to apply New York's procedural law. CPLR 202 is part of that procedural law, and the statute therefore applies here" (*id*. at 377-378).

Based on the foregoing discussion, *King* and *Samsung*, are inapplicable to the facts of this matter. First, the cases do not involve automobile insurance policies and underinsured claims arising thereunder, which are specifically addressed in the *Stolarz* decision cited by MetLife. Second, *King* and *Samsung* both involved enforceability and interpretation of contractual choice of law clauses, which is irrelevant to the instant matter because the Policy does not contain a contractual choice of law clause. Third, both *King* and *Samsung* involved the application of CPLR 202, New York's borrowing statute, but respondent does not discuss how CPLR 202 is implicated, if at all, in the present matter. In such regard, respondent's assertion that contractual choice of law provisions apply to "substantive" issues and statutes of limitations apply to "procedural" issues rings hollow, because these labels have no practical meaning or application to the issue before the court.

Indeed, as discussed above, the issue here is whether Florida or New York law apply to this matter, which involves an analysis and application of the "grouping of contacts" factors and the "State interests" test, as set forth in *Stolarz* and the Restatement, in the context of the Policy that does not contain a contractual choice of law provision. Based upon the reasons and explanations stated above, the arguments raised by MetLife are more persuasive than those by Sullivan, particularly when viewed considering the *Stolarz* decision, which is directly on point because it addresses both automobile insurance coverage issues and the choice of law analysis. Besides contending that the choice of law analysis does not apply to "procedural" issues, Sullivan further asserts that her claim is not barred by New York's statute of limitations (NYSCEF Doc. No. 10, ¶¶ 20-30). In particular, respondent contends that for an underinsured claim arising in an automobile insurance policy, "it is well-settled that a demand for arbitration is subject to the six-year statute of limitations, which begins to accrue on the date of the settlement

between the plaintiff and the tortfeasor" (*id.*, ¶ 27 [emphasis in original]; citing, among others, *Matter of Allstate Ins. Co. v Schelter,* 280 AD2d 910 [4th Dept 2001] [*Schelter*] and *Matter of Allstate Ins. Co. v Giordano,* 108 AD2d 910 [2d Dept 1985] [*Giordano*]). Because her claim accrued on April 9, 2019 "when MetLife advised of its intent to waive subrogation and commence with settlement," Sullivan contends that her claim "is not time-barred and should proceed to arbitration in Kings County" pursuant to the terms of the Policy (*id.*, ¶ 30).

Respondent's contention is unavailing. First, as discussed above, this matter involves a choice of law issue, the resolution of which determines whether Florida or New York law applies to the instant matter. Because Florida law applies, as explained above, Sullivan's assertion that her claim is not time-barred under New York law is irrelevant. Second, because the *Schelter* and *Giordano* cases involved discussions on when New York's statute of limitations begins to accrue, but involved no choice of law analysis, their holdings are also inapplicable and irrelevant to the issue before the court. Accordingly, Sullivan's opposition to the MetLife Petition fails, and this Court must rule in MetLife's favor. Further, because Sullivan's underinsured claim against MetLife is untimely based on Florida's statute of limitations and should be dismissed and because the arbitration should be stayed, all other relief requested in the MetLife Petition are academic, such as transferring venue of the arbitration to Florida, and directing Sullivan to provide additional documentation as well as appearing for an examination under oath.

Conclusion

Based on the foregoing, it is hereby

ORDERED and ADJUDGED that the application of petitioner (motion sequence number 001) is granted and the petition is granted to the extent of staying the arbitration commenced by

respondent against petitioner, and dismissing respondent's underinsured claim against petitioner as time-barred.

Any requested relief not expressly addressed by the Court has nonetheless been considered and is hereby denied and this constitutes the decision and order of the Court.

5/26/2020
DATE

W. FRANC PERRY, J.S.C.

CHECK ONE:	X	CASE DISPOSED				NON-FINAL DISPOSITION		
		GRANTED		DENIED	X	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT		REFERENCE