

**Matter of Progressive Advanced Ins. Co. v
Diaz-Martinez**

2020 NY Slip Op 34461(U)

May 20, 2020

Supreme Court, Bronx County

Docket Number: 22627/2018E

Judge: Robert T. Johnson

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY: Part 12**

**In the Matter of the Petition of
PROGRESSIVE ADVANCED INSURANCE COMPANY,**

Decision and Order

Petitioner,

Index No. 22627/2018E

-against-

**For an Order staying the arbitration attempted to be had by
VINICIO DIAZ-MARTINEZ,**

Respondent,

-and-

**AUTONYC HOLDINGS, LLC, GOVERNMENT EMPLOYEES
COMPANY, NATIONAL GENERAL INSURANCE
NEW SOUTH INSURANCE COMPANY and
NATIONWIDE GENERAL INSURANCE COMPANY,**

Proposed Additional Respondents

The following papers, numbered 1-5 were considered on the petition:

PAPERS

NUMBERED

Notice of Petition and annexed Exhibits and Affidavits.....	1
Answering Affidavits and Exhibits.....	2, 3
Reply Affidavits.....	4,5

Upon the foregoing papers, this petition is decided as follows:

Petitioner, Progressive Advanced Insurance Company, moves for an order pursuant to CPLR §7503 permanently staying the arbitration sought under an uninsured motorist claim by respondent Vinicio Diaz-Martinez, petitioner’s insured, on the grounds that there is available insurance for the offending vehicle and, that Diaz-Martinez has not complied with conditions precedent with respect to arbitration discovery or in the alternative, to temporarily stay the arbitration pending a framed issue hearing and, joining the proposed additional respondents.

On April 2, 2017 Petitioner had in force a policy of Automobile Insurance with Diaz-Martinez for the period January 29, 2017 to July 29, 2017. The policy contained the applicable New York Automobile Accident Indemnification Uninsured Motorist Endorsement providing \$25,000 Dollars per person and \$50,000 Dollars per accident, for protection against bodily injuries arising from accidents with uninsured motorists. On April 2, 2017, Diaz-Martinez was involved in an accident with a vehicle which, per the MV-104, was operated by proposed additional respondent Rayniel Darkin (“Darkin”). Also, according to the MV-104, that vehicle was owned by proposed additional respondent, AUTONYC Holdings, LLC. (“AUTONYC”) and, per a Registration Record Expansion, insured by proposed additional respondents: New South Insurance Company (“New South”), its parent company, National General Insurance Company (“National”), with open ended coverage by Government Employees Insurance Company (“GEICO”) and Nationwide General Insurance Company (“Nationwide”).¹

In opposition, National and New South maintain that the MV-104 is inadmissible hearsay and, therefore, insufficient evidence that AUTONYC’S vehicle was involved in the accident and, the use of the vehicle was “permissive.” National General and New South further argue that they have no obligation to indemnify since the insurance for the 2015 Jeep with New York license plate HJL2565 was allegedly obtained based on presentation of stolen identification and fraud.

Opposition is also filed by Nationwide. Nationwide avers that their policy which was issued to AUTONYC on June 17, 2016, was canceled on May 13, 2017. In support, they attach the Declarations and Cancellation pages. Nationwide requests that a temporary stay be granted until a framed issue hearing can determine the vehicles involved in the accident and applicable insurance coverages.

¹ The matter was discontinued against GEICO pursuant to a stipulation of discontinuance dated May 25, 2018.

An insurer seeking to stay arbitration must make a prima facie showing that the accident did not involve an uninsured motor vehicle, whereupon the burden then shifts to the claimant (see *Eagle Ins. Co. v Villegas*, 307 AD2d 879 [1st Dept 2003]). Contrary to National General and New South's contention, a police accident report is sufficient to raise a triable issue of fact (*Eagle Ins. Co. v Olephant*, 81 AD2d 886 [2d Dept 1981]). Here, inasmuch as petitioner has raised a triable issue of fact regarding the existence of insurance coverage of the vehicle at the time of the accident, a framed-issue hearing is required to resolve the dispute (see *Matter of Nationwide Ins. Enter. v Harris*, 44 AD3d 947 [2d Dept 2007]).

Accordingly, IT IS ORDERED, that the petitioner's application for a permanent stay of arbitration sought to be had by respondent Diaz-Martinez is granted only to the extent that arbitration is temporarily stayed pending a determination in a framed issue hearing on the issue of insurance coverage; and it is further

ORDERED, that the parties are directed to appear for a framed issue hearing on a date to be determined by the court upon the full reopening of the New York State Unified Court System; and it is further

ORDERED, that pending outcome of the framed issue hearing, discovery may proceed; and it is further

ORDERED, that National General Insurance Company, New South Insurance Company, and Nationwide General Insurance Company are joined as additional respondents and the caption shall be amended as follows:

**In the Matter of the Application for a stay of Arbitration of
PROGRESSIVE ADVANCED INSURANCE
COMPANY**

Petitioner

-against-

VINICIO DIAZ-MARTINEZ

Respondent

-and-

**NATIONAL GENERAL INSURANCE COMPANY,
NEW SOUTH INSURANCE COMPANY, and
NATIONWIDE GENERAL INSURANCE COMPANY**

Additional Respondents

ORDERED, that service of a supplemental notice of petition and a supplemental petition be made upon additional respondents, National General Insurance Company, New South Insurance Company, and Nationwide General Insurance Company within twenty (20) days of the date of the full reopening of the New York State Unified Court System.

This constitutes the decision and order of the court.

Dated: May 20, 2020



Hon. Robert T. Johnson