

Matter of Government Empls. Ins. Co. v Gul
2021 NY Slip Op 30688(U)
March 8, 2021
Supreme Court, New York County
Docket Number: 652178/2020
Judge: Carol R. Edmead
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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. CAROL R. EDMEAD PART IAS MOTION 35EFM

Justice

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INDEX NO. 652178/2020

IN THE MATTER OF THE APPLICATION OF
GOVERNMENT EMPLOYEES INSURANCE COMPANY TO
STAY ARBITRATION

MOTION DATE 06/02/2020

MOTION SEQ. NO. 001

Plaintiff,

- v -

DECISION + ORDER ON
MOTION

ROHANI GUL,

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for STAY.

Upon the foregoing documents, it is

ORDERED that the application of Petitioner Government Employees Insurance Company (GEICO) for a permanent stay of the arbitration demanded by Respondent Rohani Gul is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; 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 American Arbitration Association within twenty (20) days.

MEMORANDUM DECISION

In this Article 75 Action, Petitioner Government Employees Insurance Company (GEICO) moves for an order permanently staying Respondent Rohani Gul from proceeding to arbitration, or in the alternative, an order temporarily staying this matter pending a Framed Issue Hearing on the matter of whether Respondent is expressly excluded from coverage, and directing Respondent to comply with pre-arbitration discovery if, after a hearing, it is determined that Respondent is entitled to proceed to arbitration.

Respondent opposes the motion in its entirety.

BACKGROUND FACTS

This action arises out of a car accident that occurred on December 24, 2014, when Respondent sustained injuries in an automobile accident with an allegedly underinsured motorist (NYSCEF doc No. 1, ¶ 5). Respondent was operating his vehicle when he was struck by the adverse vehicle (*id.*). At the time of the accident, Respondent was insured by Petitioner for uninsured motorist benefits with a Supplemental Underinsured Motorist (SUM) limit of \$25,000 per person/\$50,000 per accident (*id.*).

By letter dated January 10, 2020, Petitioner denied Respondent's request for SUM coverage for the accident (NYSCEF doc No. 5). Petitioner determined that the vehicle Petitioner was operating at the time of the accident, a Honda Odyssey, was not one of the vehicles insured under its policy but was instead insured by American Transit Insurance ("American Transit") (*id.*). Petitioner further noted that Respondent received a \$25,000 bodily injury payment as a result of the accident, and coverage was thus not triggered under Petitioner's SUM limit (*id.*).

In a letter response to Petitioner's denial dated January 16, 2020, counsel for Respondent noted that the bodily injury payment of \$25,000 was a settlement from the driver of the adverse

vehicle in a private civil action, and thus was not related to Respondent's policy with American Transit and should not trigger Petitioner's SUM limit (NYSCEF doc No. 14). Counsel for Respondent concluded Respondent was thus still entitled to Petitioner's SUM coverage.

On March 18, 2020, Respondent served a demand for arbitration on Petitioner with the American Arbitration Association (NYSCEF doc No. 2).

On June 2, 2020, Petitioner commenced the motion now before this Court, arguing that Petitioner is expressly excluded from pursuing SUM coverage as the vehicle he was operating at the time of the accident was not insured under its SUM policy (NYSCEF doc No. 1). Petitioner further contends that Respondent is barred from recovery as Petitioner is entitled to a complete "offset" of the amount of \$25,000 that Respondent already received in his action against his tortfeasor (*id.*). In the alternative, Petitioner asks that the arbitration be stayed pending a hearing on the matter of whether Respondent is expressly excluded from coverage. Respondent also asks that the Court issue an order directing Respondent to provide all relevant medical records and authorizations, and to submit to an examination under oath and physical examinations, should it be determined that Respondent is entitled to arbitration.

In opposition, Respondent does not dispute that the vehicle Petitioner was operating at the time of the accident was not listed under Petitioner's SUM policy but contends that this matter should still proceed to arbitration as Petitioner may be owed coverage due to ambiguities in Petitioner's policy. Respondent further contends that he is entitled to SUM coverage notwithstanding the \$25,000 he received from the adverse driver as that payment was a settlement in a private civil action before this court (Hon. Adam Silvera), *Rohani Gul v Mark Key* (Index No. 155241/2015), and not a payment under Respondent's separate SUM coverage with American Transit.

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. Accordingly, in a dispute regarding whether an insured is entitled to coverage, the burden of establishing evidentiary facts sufficient to warrant a stay is on the insurer seeking the stay of arbitration (*Matter of Empire Mut. Ins. Co. [Greaney]*, 156 A.D.2d 154, 155 [1989]). It is also 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]).

The Court of Appeals has held that when an applicable provision of a policy is clear and unambiguous, “courts should refrain from rewriting the agreement” and defer to the insurer’s stance regarding coverage (*Government Empls. Ins. Co. v Kligler*, 42 NY2d 863 [1977]).

The Court finds that under Petitioner’s SUM policy, it is unambiguous that Respondent is disqualified from coverage as the policy specifically states that the SUM coverage “does not apply to bodily injury to an Insured incurred while occupying a motor vehicle owned by that Insured, if such motor vehicle is not insured for SUM coverage by the policy under which a claim is made” (NYSCEF doc No. 4 at 14). Respondent’s sole argument regarding this exclusion is that there is an ambiguity as to whether the exclusion applies to the subject accident as the vehicle involved *was* insured for SUM coverage under a different policy with American Transit, and no claim was made (NYSCEF doc No. 10, ¶ 7). However, it is of no moment that no claim

was made with American Transit, as the fact remains that the vehicle was not insured *by the policy under which the claim was made*, i.e. Petitioner's policy.

As the exclusion in Petitioner's policy unambiguously applies to the circumstances herein, the Court finds that Petitioner has demonstrated entitlement to a permanent stay of arbitration.

While Petitioner's application can be granted on this ground alone, the Court further notes that Respondent is also precluded from recovery pursuant to the "Maximum SUM Payment" provision of Petitioner's policy, which unambiguously states that the maximum SUM payment shall not exceed the difference between the SUM limits and the "motor vehicle bodily injury liability insurance or bond payment received by the insured or the insured's legal representative, from or on behalf of all persons that may be legally liable for the bodily injury sustained by the insured" (NYSCEF doc No. 4 at 14). Here, as discussed, Respondent received a \$25,000 payment from his tortfeasor's insurer as a settlement in his earlier civil action against the adverse driver (Index No. 155241/2015, NYSCEF doc No. 29). In an affidavit submitted to the Court (Hon. Silvera) in the earlier action, Respondent's former counsel states, "I have been able to negotiate a settlement offer of \$25,000.00, the full policy from the defendant's carrier, Geico Insurance" (*id.*, ¶ 14).

In *Matter of Allstate Ins. Co. v Rivera*, the Court of Appeals held that passengers¹ injured in an automobile accident were stayed from proceeding to arbitration after the respective tortfeasors' insurers tendered their coverage limits to the injured passengers, as "the bodily injury liability insurance coverage limits provided under the respective tortfeasors' policies were equal

¹ While *Rivera* involved passengers seeking SUM coverage as opposed to the driver of the vehicle, the Court of Appeals' holding is applicable here as the Court found that injured passengers fell within the endorsement's definition of an "insured."

to the third-party bodily injury liability limits of the insureds' policies" (12 NY 23d 602 [2009]). The Court of Appeals cited the plain language of Insurance Law § 3420, which holds that SUM coverage is only triggered "where the bodily injury liability insurance limits of the policy covering the tortfeasor's vehicle are less than the third-party liability limits of the policy under which a party is seeking SUM benefits" (id. at 607-608). Here, as Respondent received a payment from his tortfeasor's policy equal in value to the limit under his own policy, there is no SUM coverage available.

Guided by the unambiguous exclusion clause in Petitioner's policy, along with the SUM limit provision and the Rivera holding, the Court concludes that Petitioner has demonstrated that there is no coverage available to Respondent, and the arbitration demanded by Respondent is accordingly permanently stayed.

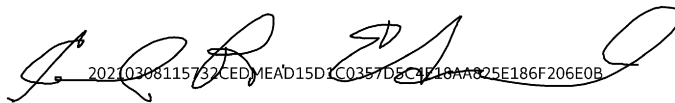
CONCLUSION

Based on the foregoing, it is hereby

ORDERED that the application of Petitioner Government Employees Insurance Company (GEICO) for a permanent stay of the arbitration demanded by Respondent Rohani Gul is granted; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; 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 American Arbitration Association within twenty (20) days.


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3/8/2021
DATE

CAROL R. EDMED, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
	<input checked="" type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE