

**Khadjeturian v Servidone**

2021 NY Slip Op 33582(U)

September 14, 2021

Supreme Court, Westchester County

Docket Number: Index No. 65354/2019

Judge: Joan B. Lefkowitz

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

To commence the statutory time period for appeals as of right [CPLR 5513(a)], you are advised to serve a copy of this order, with notice of entry upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER – COMPLIANCE PART

-----X  
RACHELE E. KHADJETURIAN and TINA  
KHADJETURIAN,

Plaintiffs,

**DECISION & ORDER**

-against-

Index No. 65354/2019  
Motion Seq. No. 2

PETER SERVIDONE,

Defendant.

-----X  
LEFKOWITZ, J.

The following papers were read on plaintiffs’ motion for an order pursuant to 22 NYCRR 202.21(d) and CPLR 3124, vacating the note of issue and compelling defendant to provide a copy of insurance policy number 913-151-704, and for such other and further relief as this Court deems just and proper.

- Notice of Motion - Affirmation in Support - Exhibits
- Affirmation in Opposition - Exhibits
- Affirmation in Reply

Upon the foregoing papers, this motion is determined as follows:

Plaintiff Rachele Khadjeturian was allegedly injured on April 19, 2019 when her vehicle was struck by a vehicle owned and operated by defendant. Plaintiffs allege the collision occurred when defendant backed his vehicle out of his driveway in front of plaintiffs’ oncoming vehicle. Plaintiff’s spouse Tina Khadjeturian asserts a derivative claim.

Plaintiffs served a request for production of documents dated January 14, 2020, demanding in relevant part a copy of the contents of each and every primary, contributing and excess insurance agreement under which an insurer may be liable to satisfy part or all of a judgment in this action, or may be obligated to defend this action (Plaintiffs’ Exhibit B, demand #7). A February 24, 2020 compliance conference order directed that on or before March 13, 2020 defendant was to serve responses to plaintiffs’ outstanding discovery demands dated January 14, 2020 (NYSCEF Doc. #11). On March 10, 2020, defendant provided an “excess affidavit” dated November 12, 2019, indicating defendant has a personal umbrella policy, Allstate policy number 913-151-704, with limits of liability of \$1,000,000. The document was signed by defendant Peter

Servidone and notarized (Defendant's Exhibit A). Plaintiffs' motion for summary judgment on the issue of liability was granted (Smith, J., November 17, 2020) (Plaintiffs' Exhibit D). On November 20, 2020, plaintiffs filed a note of issue, stating there were no outstanding requests for discovery and the case was ready for trial (NYSCEF Doc. #26). The parties appeared for a compliance conference on December 3, 2020 (NYSCEF Doc. #27). A final compliance conference was held on January 20, 2021. On February 3, 2021, a trial readiness order was issued, noting all discovery had been completed or waived, the matter was ready for trial, and plaintiffs previously served and filed a note of issue (Plaintiffs' Exhibit E).

On March 17, 2021, defendant served a corrected insurance affidavit signed by Peter Servidone, indicating that at the time of the accident he was covered under a liability insurance policy issued by Allstate, policy number 043319814, "containing bodily injury limit of liability in the amount of \$300,000 for each person and all persons injured as a result of a single accident." The affidavit states on the date at issue Mr. Servidone "was not covered by any other applicable policy of insurance, including but not limited to, [a] policy of excess liability insurance commonly known as "Umbrella" or "Catastrophe" insurance" (Defendant's Exhibit B). Plaintiffs' counsel reportedly requested an affidavit from a claims adjuster.

Defendant provided an affidavit dated March 29, 2021 from Sarah Wolfer, a Senior Claims Service Adjuster at Allstate Insurance Company, stating "[o]n April 19, 2019, the insured Peter Servidone only had one automobile policy in effect with limits of 100/300. Mr. Servidone had no other excess or umbrella policies in effect at the time of the accident. Policy No.: 913-151-704 is not an Allstate umbrella policy" (Defendant's Exhibit C). Plaintiffs argue the new and inconsistent assertion related to policy number 913-151-704 is an unusual or unanticipated circumstance that occurred after the filing of the note of issue. Plaintiffs seek an order vacating the note of issue and compelling production of a copy of this policy in its entirety, including all riders and supplemental pages, together with an affidavit from an Allstate representative attesting that it is a true and accurate copy of the policy.

Defendant submits opposition, including Mr. Servidone's "renewal auto policy declarations" pages for Allstate policy number 913-151-702, effective March 17, 2019 through September 17, 2019, with limits of "\$100,000 each person, \$300,000 each occurrence" (Defendant's Exhibit D). Defendant submits similar declarations pages for the policy at issue, policy number 913-151-704, which state at the top of each page "renewal deluxe homeowners policy declarations." The named insureds are Peter and Angelina Servidone and the insured property is 245 Waverly Avenue, Mamaroneck, New York (Defendant's Exhibit E).

Once the note of issue has been filed and discovery presumably completed, the applicable standard for allowing additional discovery is governed by 22 NYCRR 202.21(d)(e). Within twenty days after service of a note of issue, a party may move to vacate the note of issue, upon affidavit showing in what respects the case is not ready for trial and the Court may vacate the note of issue if it appears that a material fact in the certificate of readiness is incorrect (Uniform Rules for Trial Cts [22 NYCRR] §202.21[e]). If more than twenty days have elapsed since service of the note of issue and a moving party demonstrates unusual or unanticipated circumstances developed subsequent to the filing of the note of issue and certificate of readiness which require additional discovery to prevent substantial prejudice, the Court upon motion may

grant permission to conduct further discovery (Uniform Rules for Trial Cts [22 NYCRR] §202.21[d]).

Plaintiffs demonstrate unusual and unanticipated circumstances developed after the note of issue was filed, warranting vacatur of the note of issue and further discovery to prevent substantial prejudice to the plaintiffs. It is undisputed that defendant signed an affidavit, which was served by defendant's counsel on March 10, 2020, representing that defendant maintained a personal umbrella insurance policy in the amount of \$1,000,000 under Allstate policy number 913-151-704 (Defendant's Exhibit A). On March 17, 2021, after the note of issue was filed, defendant's counsel served a second insurance affidavit stating defendant was not covered by excess liability insurance commonly known as "Umbrella" or "Catastrophe" insurance (Defendant's Exhibit B). The March 29, 2021 affidavit from the claims adjuster does not entirely clarify the issue of applicable insurance coverage. This affidavit states policy number 913-151-704 is not an Allstate umbrella policy, but the affidavit fails to clarify what type of policy it is (Defendant's Exhibit C). In opposition to the motion, defendant submits declaration pages for Allstate policy number 913-151-704, which state "renewal deluxe homeowners policy declarations" at the top of each page. This policy includes "family liability protection" with limits of liability of "\$1,000,000 each occurrence." It is unclear on this motion what the family liability protection covers and whether it is applicable to the claims in this action.

This Court is troubled by the fact that defendant's counsel exchanged inaccurate and inconsistent insurance information and failed to attempt to correct and fully clarify this information for over a one year period. It is generally reasonable for plaintiffs to rely on an insurance disclosure served by defendant's counsel. Without accurate insurance information plaintiffs cannot fully evaluate a matter and determine the best litigation strategy, including whether to pursue settlement or trial. Pursuant to CPLR 3101(f), a party may obtain the contents of any insurance agreement. In an action to recover damages for personal injuries, defendant should disclose all insurance policies that might potentially provide coverage to him for the incident (*see McKiernan v Vaccaro*, 168 AD3d 827 [2d Dept 2019]; *Keenan v Harbor View Health & Beauty Spa*, 205 AD2d 589 [2d Dept 1994]). Furthermore, plaintiff has a right to the disclosure of documentation that is material and necessary to the prosecution of the action (CPLR §3101[a]). Here, it is unclear whether Allstate policy number 913-151-704 may potentially provide coverage to defendant for the incident at issue. In light of the inconsistent and confusing insurance information exchanged by defendant's counsel, defendant is directed to provide a copy of Allstate policy number 913-151-704 in its entirety, including all riders and supplemental pages, together with a supporting affidavit from an Allstate representative with knowledge stating it is an accurate and complete copy of the policy.

In view of the foregoing, it is

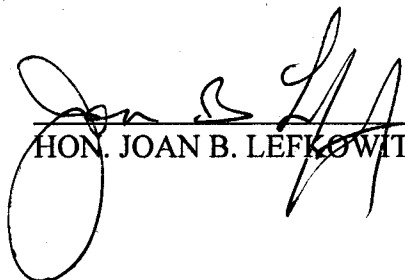
ORDERED that plaintiffs' motion is granted, the note of issue is vacated, and defendant is directed to provide on or before October 1, 2021 a copy of Allstate policy number 913-151-704 in its entirety, including all riders and supplemental pages, together with a supporting affidavit from an Allstate representative with knowledge stating it is an accurate and complete copy of the policy; and it is further

ORDERED that all parties are directed to appear for a compliance conference on November 1, 2021 at 2:30 p.m., at which time this Court anticipates that all discovery will be complete and a new trial readiness order will be issued. The Compliance Part Clerk will notify the parties, confirming the date, time, and method of the conference; and it is further

ORDERED that plaintiffs shall serve a copy of this Order with notice of entry upon all parties within seven (7) days of entry. Plaintiffs shall file proof of service on the NYSCEF website within five (5) days of service.

The foregoing constitutes the decision and order of this Court.

Dated: White Plains, New York  
September 14, 2021



HON. JOAN B. LEFKOWITZ, J.S.C.

TO: All Counsel via NYSCEF

Compliance Part Clerk