

**Government Empls. Ins. Co. v Martinez-Liang**

2023 NY Slip Op 33716(U)

October 12, 2023

Supreme Court, New York County

Docket Number: Index No. 651588/2023

Judge: Arlene P. Bluth

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.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

-----X

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Petitioner,

- v -

TAINA MARTINEZ-LIANG,

Respondent

PLYMOUTH ROCK ASSURANCE CORPORATION OF  
NEW YORK, LIMO PROS LLC,

Proposed Additional Respondents.

-----X

**INDEX NO. 651588/2023**

**MOTION DATE 10/11/2023**

**MOTION SEQ. NO. 001 002**

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2- 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 32

were read on this motion to/for STAY.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47

were read on this motion to/for AMEND CAPTION/PLEADINGS.

Motion Sequence Numbers 001 and 002 are consolidated for disposition.

The petition (MS001) for a permanent stay of arbitration shall be determined at a framed issue hearing. The motion (MS002) to amend the petition to add three additional parties is granted.

**Background**

On December 20, 2021, respondent Martinez-Liang was walking in Manhattan when she was allegedly hit by a car and the driver fled the scene of the accident. Martinez-Liang sought coverage under her own insurance policy, which was issued by petitioner. Petitioner claims it conducted a search of the license plate of the offending vehicle and discovered that this vehicle was owned by respondent Limo Pros LLC (“Limo Pros”) and was insured by respondent

Plymouth Rock Assurance Corporation of New York (“Plymouth”). Petitioner insists that this shows the vehicle was not “uninsured” as claimed by Martinez-Liang or, in the alternative, that there be a framed issue hearing to determine whether or not the vehicle was insured.

Martinez-Liang also insists that there needs to be a framed issue hearing because she claims that it is not clear if the operator of the vehicle had permission to drive it at the time of the accident.

Plymouth and Limo Pros submit papers and include the affidavit of Karen Johnson, a senior claims representative for Plymouth (NYSCEF Doc. No. 21). She contends that the driver of the vehicle, Maninder Singh, was driving the car in connection with his employment for Lyft (*id.* ¶ 3). Ms. Johnson insists she spoke with Mr. Singh, who purportedly confirmed he was working for Lyft at the time of the accident and that he had a TLC commercial insurance policy through Hereford Insurance Company (*id.*). Plymouth argues that Hereford Insurance Company, Mr. Singh, and Lyft should be added as proposed additional respondents.

After these papers were filed, petitioner filed a motion (MS002) to amend the petition to add these three parties.

Hereford Insurance Company (“Hereford”) submits papers in which it claims it issued insurance under the subject policy number to a 2018 Honda that listed the driver as Usman Fayyaz whereas the alleged vehicle involved in the subject accident was a 2015 Chevrolet driven by Mr. Singh. Hereford therefore questions why it should be added as a respondent when it did not issue insurance to the alleged offending vehicle.

Lyft also submitted opposition; however, it was submitted very late (the day before the return date even though the notice of motion required it to be submitted seven days prior to the

return date) and so the Court will not consider it as petitioner did not have a chance to submit a reply.

### Discussion

“Where a triable issue of fact is raised, the Supreme Court, not the arbitrator, must determine it in a framed-issue hearing, and the appropriate procedure under such circumstances is to temporarily stay arbitration pending a determination of the issue” (*Matter of Hertz Corp. v Holmes*, 106 AD3d 1001, 1003, 966 NYS2d 157 [2d Dept 2013]). The above recitation of the facts in this case necessitates a framed issue hearing.

There are many, many issues to be explored. The driver of the offending vehicle must be established (the Court observes that it cannot simply credit the hearsay assertions by Ms. Johnson about what Mr. Singh may have said about the accident). The hearing must also explore whether or not the driver had permission to operate the vehicle at the time of the accident and, if the driver was Mr. Singh, whether or not he was working as a Lyft driver at the time of the accident. And those facts, obviously, bear on if coverage is available from Plymouth or Hereford. Of course, Hereford asserts that it did not provide coverage under the policy number cited for the specific vehicle at issue here.

Petitioner shall file a note of issue on or before November 2, 2023.

Accordingly, it is hereby

ORDERED that the petition to stay arbitration is granted to the extent that a trial is directed of the preliminary issues of the identity of the driver of the offending vehicle, permissive use of the offending vehicle, and insurance coverage, and the arbitration is stayed pending such trial; and it is further


ORDERED that the Clerk of the General Clerk’s Office is directed to assign this matter to an appropriate Part for trial upon receipt of a copy of this order with notice of entry and the filing of a note of issue and a certificate of readiness and the payment of appropriate fees; and it is further

ORDERED that petitioner shall serve a copy of this order with notice of entry within 20 days of entry upon the attorneys for the respondent and the arbitrator, and upon the Clerk of the Court and the Clerk of the General Clerk’s Office; and it is further

ORDERED that petitioner shall, within the aforesaid deadline, serve a copy of this order with notice of entry, together with copies of all papers previously served in the proceeding, upon PLYMOUTH ROCK ASSURANCE CORPORATION OF NEW YORK, LIMO PROS LLC, HEREFORD INSURANCE COMPANY, MANINDER SINGH and LYFT, INC., who upon such service shall be added as a party respondents, and it is further

ORDERED that the caption of this proceeding is amended to reflect inclusion of said additional party respondents and the Clerk of the Court and the Clerk of the General Clerk’s Office, upon service by petitioner on each of them of a copy of this order with notice of entry, shall mark their records to reflect the amendment; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk’s Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website)].

<u>10/12/2023</u> <b>DATE</b>	 <hr/> <b>ARLENE P. BLUTH, J.S.C.</b>
----------------------------------	---

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input checked="" type="checkbox"/> OTHER
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