

**Country-Wide Ins. Co. v Geico Gen. Ins. Co.**

2023 NY Slip Op 34528(U)

December 20, 2023

Supreme Court, New York County

Docket Number: Index No. 652998/2023

Judge: Shahabuddeen Abid Ally

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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. SHAHABUDDEN ABID ALLY PART 16TR**  
*Justice*

-----X  
INDEX NO. 652998/2023  
COUNTRY-WIDE INSURANCE COMPANY a/s/o  
SAINTANO J. CLERGE, MOTION DATE 08/21/2023  
Petitioner, MOTION SEQ. NO. 001

- v -

GEICO GENERAL INSURANCE COMPANY, **DECISION + ORDER ON  
MOTION**  
Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1-10  
were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

Petitioner moves pursuant to CPLR § 7511 for an order vacating the award issued in  
an Arbitration Forums Inc. arbitration proceeding between the parties. Respondent has neither  
opposed nor otherwise appeared in this proceeding. Upon consideration of the above cited papers  
and without opposition, the petition is granted.

***Background***

On or about June 9, 2022, a motor vehicle accident occurred between a vehicle driven  
by respondent’s insured, Carmen Tejada, and a vehicle driven by Sainatano J. Clerge. Plaintiff  
avers that on the date of the accident, Clerge’s vehicle, a yellow bus, was owned by Pioneer  
Transportation Corporation (“Pioneer”) and insured by Old Republic Insurance Company, which  
is supported by the annexed DMV record (exhibit A, NYSCEF No. 3). Clerge himself was  
insured by petitioner on four other vehicles, none of which were the yellow bus involved in the  
June 9 accident (Affidavit of Melissa Scanlon, policy declarations page).

Respondent commenced an arbitration against petitioner on or about February 27, 2022 seeking reimbursement for payments made to its insured. On January 5, 2022 and again on February 28, 2022 respondent sent Intercompany Reimbursement Notifications to petitioner, which listed Clerge as petitioner's insured (exhibit B, NYSCEF No. 4).

At the arbitration, arbitrator Agnes Neiger found 50% liability on respondent and 50% liability on petitioner, who was listed as insurer for Pioneer (exhibit D, NYSCEF No. 6). Upon receipt of the award, and having apparently been unaware of being listed as Pioneer's insurer, petitioner undertook to search its records for claims by or on behalf of Pioneer (Affidavit of Melissa Scanlon). The search revealed that there was no contract for insurance between petitioner and Pioneer (*id.*). Petitioner commenced the instant proceeding on June 22, 2023.

### *Discussion*

“It is well settled that a court may vacate an arbitration award only if it violates a strong public policy, is irrational, or clearly exceeds a specifically enumerated limitation on the arbitrator's power” (*Matter of Falzone [New York Cent Mut Fire Ins Co]*, 15 NY3d 530, 534 [2010]). Such enumerated limitations are set forth in CPLR § 7511, which provides that an arbitration award may be vacated upon a finding that the rights of a party were prejudiced by (1) corruption, fraud, or misconduct in procuring the award; (2) the partiality of an arbitrator; (3) the arbitrator having exceeded their power or so imperfectly executed it that a final and definite award upon the subject matter submitted was not made; or (4) failure to follow the procedures set forth in Article 75 of the CPLR (CPLR § 7511[b][1][i]-[iv]). A party seeking to vacate an arbitration award bears a heavy burden, as “[a]n arbitration award must be upheld when the arbitrator ‘offer[s] even a barely colorable justification for the outcome reached” (*Wien &*

*Malkin, LLP v Helmsley-Spear Inc*, 6 NY3d 471, 479 [2006][citing *Matter of Andros Compania Maritima, S.A. [Marc Rich & Co, A.G.]*, 579 F2d 691, 704 [2d Cir 1978]].

Although generally an arbitration award is not reviewable for errors of fact (*Colleti v Mesh*, 23 AD2d 245 [1st Dept 1965]), an award that the contractual limits of an insurance policy were exceeded has been held to constitute an excess of authority (*State Farm Ins. Co. v Credle*, 228 AD2d 191 [1st Dept 1996]). Additionally, a defense of lack of coverage is not precluded by a party's failure to raise it at the underlying arbitration (*see Central Gen. Hosp. v Chubb Group of Ins. Cos.*, 90 NY2d 195 [1997]).

Here, petitioner has provided documentation demonstrating that it did not have a contract for insurance for the yellow bus involved in the June 9, 2022 accident. Based upon the Affidavit of Melissa Scanlon, a supervisor employed by petitioner, and the policy documents annexed, it appears that petitioner insured the driver but not the yellow bus. The Affidavit itself establishes that pursuant to a search conducted of petitioner's records, there was no policy in effect between petitioner and Pioneer, the registered owner of the yellow bus. Finally, the DMV documentation lists the owner of the yellow bus as Pioneer and Pioneer's insurer as Old Republic Insurance Company, an entirely different insurer. Respondent, having failed to file opposition, has not provided any evidence to controvert petitioner's showing.

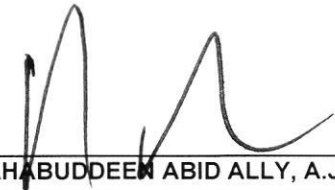
Based on the foregoing, the Court finds that petitioner has met its burden and the petition is granted.

Accordingly, it is hereby:

**ORDERED** and **ADJUDGED**, that the petition is granted without opposition and the award is vacated; and it is further

**ORDERED** that this matter is remanded to Arbitration Forums, Inc. for a new hearing.

This constitutes the decision and order of the Court.

<u>12/20/2023</u> DATE	 SHAHABUDEEN ABID ALLY, A.J.S.C.			
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE