Matter of Government Empls. Ins. Co. v Hepburn
2023 NY Slip Op 35127(U)
December 1, 2023
Supreme Court, Bronx County
Docket Number: Index No. 807563/2023E
Judge: Leticia M. Ramirez
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX PART IAS-8
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In the Matter of the Application of the

GOVERNMENT EMPLOYEES INSURANCE COMPANY, Index # 807563/2023E

Petitioner,

against

To Stay the Arbitration sought to be had by
CAMILLE A. HEPBURN, HON. LETICIA M. RAMIREZ

Respondents,

-and-

DECISION/ORDER

AMERICAN BANKERS INSURANCE COMPANY
OF FLORIDA, NEW YORK MARINE GENERAL
INSURANCE COMPANY, AUTOS FOR HIRE
RPG INC. and LUX CREDIT CONSULTANTS, LLC.,

Proposed Additional Respondents.
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Petitioner Government Employees Insurance Company, (hereinafter, "GEICO"), moves by Petition and Notice of Petition, pursuant to *CPLR §7503*, seeking, *inter alia,* to stay the arbitration filed by Respondent Camille A. Hepburn, (hereinafter, "Hepburn"), alleging entitlement to uninsured motor vehicle benefits which arose out of an automobile accident.

This is a personal injury action wherein Respondent Hepburn alleges on or about May 15, 2022, on the Cross Bronx Expressway near Exit #1 in Bronx, New York, her vehicle was struck on the right passenger side by a vehicle that fled the scene of the accident, causing her to sustain injuries.

On or about May 3, 2023, Respondent filed a request for Arbitration based upon the belief the offending vehicle was uninsured. Petitioner GEICO now moves to permanently stay the arbitration, alleging Respondent is not entitled to uninsured motor vehicle benefits since the adverse vehicle was insured, or in the alternative, temporarily staying the arbitration pending a hearing and directing Respondent to provide pre-arbitration discovery. Petitioner also seeks to have American Bankers Insurance Company of Florida, New York Marine General Insurance Company, Autos for Hire RPG Inc., and Lux Credit Consultants, LLC., added as proposed additional respondents in this action.

In support of its claim, Petitioner submits a police accident report. Per the police accident report, Respondent Hepburn is listed as the driver and registered owner of vehicle #1, license plate number KUE8317. With respect to vehicle #2, the only information on the police accident report is a license plate number, KTF8665, and the vehicle type is designated as “SUV”. The portion of the police accident report referring to the insurance code designations for both vehicles is blank.

In its petition, GEICO argues Respondent has failed to furnish sufficient evidence to support the allegation that the offending vehicle was uninsured on the date of the within accident. In support, Petitioner argues, *inter alia,* the vehicle may have been insured on the date of the accident based on a search of the plate conducted with the Department of Motor Vehicles and correspondence from American Bankers Insurance Company of Florida listing Autos for Hire RPG Inc. and Lux Credit Consultants, LLC. In addition, the plate search reveals the offending vehicle may have also been insured by New York Marine General Insurance Company. Based on this, Petitioner argues Respondent is not entitled to uninsured motorist benefits.

In opposition, Respondent’s counsel contends Respondent believes she identified the plate number of the fleeing vehicle as NY KTF8665. However, New York Marine General Insurance Company, the carrier for the owner of the vehicle (Lux Credit Consultants, LLC), denies involvement in the incident, relying on an email from Stefanie Viola of Gallagher Bassett, the third-party administrator for New York Marine General Insurance Company. As such, Respondent requests a framed issue hearing be ordered by the Court to determine the applicable coverage.

In reply, Petitioner asserts, *inter alia,* Respondent agrees this matter should be scheduled for a framed issue hearing, and further asserts, it has made a prima facie case that an insurance policy may have been in effect for the alleged offending vehicle on the date of the accident.

"In a proceeding to stay arbitration of a claim for uninsured motorist benefits, the claimants' insurer has the initial burden of proving that the offending vehicle was insured at the time of the accident, and thereafter the burden is on the party opposing the stay to rebut that prima facie showing" *Matter of Lumbermens Mut. Cas. Co. v. Quintero, 305 A.D.2d 684, 684–685, 762 N.Y.S.2d 82; see Matter of Eagle Ins. Co. v. Tichman, 185 A.D.2d 884 [2nd Dept 1992].* Moreover, the party seeking a stay of arbitration, has the burden of showing sufficient fact to establish justification for the stay. *See, Matter of Empire Mutual Ins., Co [Zelin], 120 AD2d 365, 366, 502, N.Y.S. 2d 20[1st Dept 1986].* Where, however, "there is a genuine triable issue.....the appropriate procedure is to stay arbitration pending a trial of the threshold issue" (id).

CPLR §3102, states in pertinent part, in a proceeding to temporarily stay arbitration of an underinsured motorist claim to allow for discovery in aid of arbitration, the Court may direct Respondent to attend an examination under oath and to provide medical authorizations for the medical records and reports relative to the subject accident where it is entitled to such disclosure pursuant to the terms of the policy. see, *CPLR §3102(c)*; see, *Matter of New York Cent. Mut. Fire Ins. Co. v Serpico*, 45 AD3d 598 (2nd Dept. 2007).

Based upon the arguments made by counsel, in addition to a review of the papers submitted, this Court finds Petitioner has not demonstrated entitlement to a permanent stay of arbitration. Therefore, the portion of the petition seeking a permanent stay is denied.

In the alternative, Petitioner's request for a temporary stay is hereby granted as this Court finds a threshold issue exists requiring a stay. The threshold issue is whether the offending vehicle was insured by any of the aforementioned companies at the time of the accident. Moreover, both Petitioner and Respondent are in support of conducting a framed issue hearing to resolve the threshold issue.

This Court also finds Petitioner has demonstrated entitlement to pre-arbitration discovery pursuant to the terms set forth in the Policy of Insurance. Respondent is hereby directed to furnish Petitioner with medical and employment authorizations, cooperate in scheduling and appearing for examinations under oath, and medical examinations consistent with the mandates contained in the Policy of Insurance.

Accordingly, within thirty (30) days of filing proof of service of a copy of this Order with Notice of Entry, the Clerk shall set this matter down for a framed issue hearing.

Lastly, Petitioner's request to add the proposed additional Respondents, American Bankers Insurance Company of Florida, New York Marine General Insurance Company, Autos for Hire RPG Inc., and Lux Credit Consultants, LLC., is also granted.

ORDERED: The Petition to permanently stay arbitration is denied. The portion of the Petition seeking to temporarily stay arbitration, compel pre-arbitration discovery, and add the proposed additional Respondents to the matter, is granted.

This constitutes the Decision and Order of this Court.

Dated: December 1, 2023

Hon Leticia M Ramirez

Hon Leticia M Ramirez, JSC