

Matter of Nationwide Gen. Ins. Co. v Faulkner

2024 NY Slip Op 30985(U)

March 22, 2024

Supreme Court, New York County

Docket Number: Index No. 652931/2023

Judge: John J. Kelley

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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. JOHN J. KELLEY PART 56M

Justice

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INDEX NO. 652931/2023

In the Matter of

MOTION DATE 11/08/2023

NATIONWIDE GENERAL INSURANCE COMPANY,

MOTION SEQ. NO. 001

Petitioner,

- v -

**DECISION, ORDER, AND
JUDGMENT**

BRITTANY FAULKNER,

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11

were read on this motion to/for STAY OF ARBITRATION.

This is a proceeding pursuant to CPLR 7503, pursuant to which the petitioner, Nationwide General Insurance Company (Nationwide), seeks a permanent stay of arbitration of a claim for uninsured motorist (UM)/supplementary underinsured motorist (SUM) benefits that had been demanded by the respondent, Brittany Faulkner. Faulkner opposes the petition. The petition is denied, and the parties are directed to proceed to arbitration of the UM/SUM claim.

As set forth in the affidavit of the petitioner’s claims specialist, Robert Olari, in the March 1, 2023 transcript of Faulkner’s examination under oath, and in Faulkner’s affidavit, on November 15, 2022, Faulkner was struck by a moped that left the scene of the accident. Specifically, Faulkner had taken the uptown No. 1 train on the New York City subway from the 28th Street station to the Times Square station, and intended to transfer to the uptown No. 2 train. As Faulkner walked across the platform from the No. 1 train to the track for the No. 2 train, a man operating a moped struck Faulkner, causing her to lose consciousness. According to Faulkner, she was bleeding from the left side of her face and the back left side of her head as a result of the impact with the moped, leading to memory loss. She was taken by ambulance to

Bellevue Hospital. Faulkner asserted that, immediately prior to the impact, she recalled seeing people turn their heads and hearing a loud, unusual noise. The New York City Police Department aided report indicated that she had indeed been struck by a moped.

Nationwide had issued a motor vehicle insurance policy to John C. Faulkner, a member of Faulkner's household. Faulkner thereafter made a claim for UM/SUM benefits under that policy, alleging that the hit-and-run vehicle was uninsured. In a letter dated March 16, 2023, the petitioner denied her claim, asserting that its investigation "indicates that there is no proof that the 'moped or scooter' involved in this incident would classify as a motor vehicle. Based on this information, there is no coverage for this claim under the Nationwide policy issued to John C Faulkner." On May 25, 2023, she demanded arbitration of the claim before the American Arbitration Association, in accordance with the provisions of the Nationwide policy. This proceeding to stay arbitration ensued.

The relevant policy provided that Nationwide would provide UM/SUM coverage where a member of the insured's household sustained injury by virtue of being involved in an accident with an "uninsured motor vehicle." Section I.c of the UM/SUM endorsement defines "uninsured motor vehicle" as

"a motor vehicle that, through its ownership, maintenance or use, results in bodily injury to an insured, and for which:

"(1) No bodily injury liability insurance policy or bond applies to such motor vehicle (including a vehicle that was stolen, operated without the owner's permission or unregistered) at the time of the accident; or

(2) The owner and operator cannot be identified (including a hit-and-run motor vehicle), and which causes bodily injury to an insured by physical contact with the insured or with a motor vehicle occupied by the insured at the time of the accident."

Section 1.c.iii further provides that the term "'uninsured motor vehicle' shall not include a motor vehicle that is:

"(1) Insured under the liability coverage of this policy; or

“(2) Owned by you, the named insured, or your spouse residing in your household; or

“(3) Self-insured within the meaning of the financial responsibility law of the state in which the motor vehicle is registered, or any similar state or federal law, to the extent that the required amount of such coverage is equal to, or greater than, the third-party bodily injury liability limits of this policy; or

“(4) Owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing; or

“(5) A land motor vehicle or trailer, while located for use as a residence or premises and not as a motor vehicle or while operated on rails or crawler-treads; or

“(6) A farm type vehicle or equipment designed for use principally off public roads, except while actually upon public roads.”

The definitions set forth in the UM/SUM endorsement do not expressly exclude mopeds from the definition of “uninsured motor vehicle.”

A moped has long been considered to constitute an “uninsured motor vehicle and hence covered by the uninsured motorist endorsement of the automobile liability insurance policy issued to the pedestrian victim who was hit by an uninsured moped” (*Matter of Nationwide Mut. Ins. Co. v Riccadulli*, 183 AD2d 111, 118 [2d Dept 1992], citing *Matter of Home Mut. Ins. Co. v Marlin*, 82 AD2d 807, 807 [2d Dept 1981] [a “moped,” or “motorized bicycle constitutes an uninsured motor vehicle within the meaning of the uninsured motorist endorsement contained in the insurance policy issued to respondent”]; see *Lalomia v Bankers & Shippers Ins. Co.*, 31 NY2d 830 [1972], *affg on opn at App Div* 35 AD2d 114 [2d Dept 1970]; *Geiger v Insurance Co. of N. Am.*, 41 AD2d 796, 796 [3d Dept 1973]; *Matter of Allcity Ins. Co. v Di Lorenzo*, 33 AD2d 665 [1st Dept 1969]). The court notes that, subsequent to April 3, 2020, “bicycles with electric assist,” commonly known as e-bikes, as defined in Vehicle and Traffic Law § 102-c, were expressly excluded from the definition of “motor vehicles” that is articulated in Vehicle and Traffic Law § 125. Nonetheless, a moped---a word that denotes a “motorcycle” with “pedals”---is generally a gas-powered vehicle, not an e-bike. Nationwide has adduced no evidence that the moped that Faulkner claims had struck her was actually an e-bike.

Any ambiguity in the language of an insurance policy must be construed against the insurer and in favor of coverage (see *Ace Wire & Cable Co. v Aetna Casualty & Surety Co.*, 60 NY2d 390, 398 [1983]; *Castlepoint Ins. Co. v Southside Manhattan View, LLC*, 179 AD3d 507, 508 [1st Dept 2020]; *Marshall v Tower Ins. Co. of N.Y.*, 44 AD3d 1014, 104 [2d Dept 2007]). “Policy exclusions are subject to strict construction and must be read narrowly, and any ambiguities in the insurance policy are to be construed against the insurer” (*Country-Wide Ins. Co. v Excelsior Ins. Co.*, 147 AD3d 407, 408 [1st Dept 2017]). The relevant policy, both in its definition of an “uninsured motor vehicle” and in its exclusions from that definition, do not expressly preclude a moped from being a “motor vehicle” in the first instance. Even if the court were to apply the post-2020 Vehicle and Traffic Law definition of “motor vehicle,” mopeds cannot be excluded. Hence, Nationwide has failed to show either that its policy provided no coverage for Faulkner’s accident in the first instance, or that accidents involving an insured and a moped were excluded from coverage.

Accordingly, it is,

ORDERED the petition is denied; and it is,

ADJUDGED that the proceeding is dismissed; and it is further,

ORDERED that the parties shall forthwith proceed to arbitration of the respondent’s claim for uninsured motorist/supplementary underinsured motorist benefits before the American Arbitration Association.

This constitutes the Decision, Order, and Judgment of the court.

3/22/2024
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE