

**Matter of Government Empls. Ins. Co. v De Liriano**

2024 NY Slip Op 32637(U)

June 28, 2024

Supreme Court, New York County

Docket Number: Index No. 654945/2023

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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In the Matter of  
GOVERNMENT EMPLOYEES INSURANCE COMPANY,  
Petitioner,

**INDEX NO.** 654945/2023

**MOTION DATE** 07/12/2024

**MOTION SEQ. NO.** 001

- v -

ROSA PONS DE LIRIANO,  
Respondent.

**DECISION, ORDER, AND  
JUDGMENT**

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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.

In this proceeding pursuant to CPLR 7503, the petitioner, Government Employees Insurance Company (GEICO), seeks permanently to stay arbitration of a claim for uninsured motorist's (UM) benefits made upon it by the respondent, Rosa Pons de Liriano. Alternatively, GEICO requests that, if the request for a stay is denied, the respondent be directed to produce items of discovery in aid of arbitration. The respondent does not oppose the petition. The petition nonetheless is denied, and the proceeding nonetheless is dismissed, inasmuch as the proceeding was not commenced within the time prescribed by CPLR 7503(c), and GEICO has not demonstrated the extraordinary circumstances necessary to support a request for discovery in aid of arbitration.

At approximately 10:00 p.m. on April 18, 2021, John Villela was operating an uninsured motor vehicle on Amsterdam Avenue in Manhattan, near its intersection with West 158th Street. At that time, his vehicle struck a vehicle owned and operated by Daniel Gago, and proceeded onto the sidewalk at the northeast corner of that intersection, striking three pedestrians,

including de Liriano. De Liriano, who claimed to be a relative and member of the household of Senasqueris Matos, made a claim for UM benefits upon GEICO, which had issued a policy of motor vehicle insurance to Matos covering a vehicle that Matos owned.

On April 28, 2022, GEICO conducted an examination under oath (EUO) of de Liriano, and, on October 14, 2022, GEICO conducted an EUO of Matos. De Liriano initially claimed to be Matos's mother-in-law. At her EUO, however, she asserted that Matos was only the father of her daughter's children, and that Matos was not formally married to her daughter, or to anyone else for that matter. Matos himself testified at his EUO that he was not formally married. In the relevant accident report, de Liriano apparently told police that, as of the date of the accident, she was residing at 11220 SW 138th Terrace, Miami, Florida, 33176, and not at the residence of Matos and her daughter, which was located at 516 West 156th Street, Apt 23, New York, New York 10032, the address at which Matos's insured vehicle was registered. At her EUO, however, de Liriano testified that, although she had moved to 455 Ronald Lane, Smyrna, Delaware, five months after the accident, on the date of the accident she did, in fact, reside with her daughter and Matos at 516 West 156th Street, Apt 23, New York, New York 10032, and had resided there for seven years. Upon concluding that de Liriano was neither a relative of the insured, nor a relative of his spouse, nor a member of his household, as required by the subject policy, GEICO disclaimed UM coverage and denied de Liriano's claim.

On August 29, 2023, de Liriano demanded arbitration of her claim for UM benefits before the American Arbitration Association. The demand included the following notice:

“pursuant to § 7503(c) of the Civil Practice Law and Rules, unless, within twenty (20) days after service of this Demand for Arbitration or Notice of Intention to Arbitrate, you apply to stay arbitration; you will thereafter be precluded from objecting that a valid agreement was not made or has not been complied with and from asserting in court the bar of a limitation of time.”

On October 9, 2023, GEICO commenced the instant proceeding to stay arbitration by filing the instant petition (see CPLR 304[a]). Although GEICO served de Liriano by mailing the notice of

petition and petition to the attorneys who were representing her in the arbitration, de Liriano did not respond to or oppose the petition.

That branch of the petition seeking a stay of arbitration nonetheless must be denied. Pursuant to CPLR 7503(c), “an application to stay arbitration must be made by the party served within twenty days after service upon him of the notice or demand, or he shall be so precluded.” “It is well settled that the time limitation prescribed by CPLR §7503(c) is jurisdictional, and, absent special circumstances, courts have no jurisdiction to consider an untimely application” (*Matter of Metropolitan Property & Cas. Ins. Co. v Coping*, 179 AD2d 499, 500 [1st Dept 1992]). “This statutory time period is to be strictly construed” (*Matter of GEICO Gen. Ins. Co. v Glazer*, 173 AD3d 499, 499 [1st Dept 2019], quoting *Gold Mills v Pleasure Sports*, 85 AD2d 527, 528, [1st Dept 1981]). “The 20-day limit is construed as a period of limitation, and the courts have no discretion to waive or extend the statutory period” (*Matter of Hartford Ins. Co. v Martin*, 16 AD3d 149, 150 [1st Dept 2005]).

“Although there is a limited exception to this rule, namely, that an otherwise untimely petition to stay arbitration may be entertained when ‘its basis is that the parties never agreed to arbitrate, as distinct from situations in which there is an arbitration agreement which is nevertheless claimed to be in valid or unenforceable because its conditions have not been complied with’ (*Matter of Matarasso [Continental Cas. Co.]*, 56 NY2d 264, 266, [1982]), this case does not meet that exception”

(*Matter of GEICO Gen. Ins. Co. v Glazer*, 173 AD3d at 499-500), since the insurance agreement between Matos and GEICO here contains an arbitration clause with respect to claims for UM benefits, and the claim was made under Matos’s policy. Inasmuch as the demand to arbitrate was served upon GEICO on August 29, 2023, and included the required notice as to the effect of GEICO’s failure timely to seek a stay arbitration (see *Cooper v Bruckner*, 21 AD3d 758, 759-760 [1st Dept 2005]; *Matter of Central Sutton, LLC v Y Levy Contr. Corp.*, 2023 NY Slip Op 33738[U], \*3-4, 2023 NY Misc LEXIS 10353, \*5 [Sup Ct, N.Y. County, Oct. 12, 2023] [Kelley, J.]), GEICO had 20 days from that date, or until September 18, 2023, within which to commence this proceeding to stay arbitration. Since GEICO did not commence

this proceeding until October 9, 2023, the court has no jurisdiction to consider the petition. The issue of whether de Liriano's claim is covered by the policy, including the issues of whether she resided in Matos's household on the date of the accident, and whether Matos was her daughter's "spouse" within the meaning of the policy, must thus be left to the arbitrator to determine (*see Matter of Aetna Cas. & Surety Co. v Cochrane*, 64 NY2d 796, 797-798 [1985]).

"Generally, courts may not order discovery in aid of arbitration unless the movant has demonstrated extraordinary circumstances" (*Matter of Hendler & Murray, P.C. v Lambert*, 127 AD2d 820, 820 [2d Dept 1987] [citations and internal quotation marks omitted]; *see De Sapio v Kohlmeyer*, 35 NY2d 402, 406 [1974]). The "test is necessity rather than convenience" (*Matter of State Farm Mut. Auto. Ins. Co. v Wernick*, 90 AD2d 519, 519 [2d Dept 1982]). Inasmuch as GEICO has not demonstrated the requisite extraordinary circumstances, that branch of its petition seeking discovery in aid of arbitration must be denied.

Accordingly, it is,

ORDERED that the petition is denied; and it is,

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

ORDERED that, upon the denial of the petition and the dismissal of the proceeding, the parties shall proceed to arbitration forthwith before the American Arbitration Association; and it is further,

ORDERED that, within 15 days of the entry of this Decision, Order, and Judgment, the petition shall serve a copy of this Decision, Order, and Judgment with notice of entry, both by regular mail and certified mail, return receipt requested, upon the attorneys representing the respondent in the pending arbitration proceeding and the American Arbitration Association.

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

6/28/2024  
DATE

  
JOHN J. KELLEY, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	DENIED	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	