

Matter of United Fin. Cas. Co. v Hasangjekaj
2024 NY Slip Op 35056(U)
December 13, 2024
Supreme Court, Westchester County
Docket Number: Index No. 64171/2024
Judge: Thomas Quiñones
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To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER – I.A.S. PART

PRESENT: HON. THOMAS QUIÑONES, J.S.C.

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In the Matter of the Application of
United Financial Casualty Company i/s/h/a
PROGRESSIVE INSURANCE COMPANY,
Petitioner(s).

DECISION AND ORDER

Index No. 64171/2024
Motion Sequence No. 1

-against-

DRITON HASANGJEKAJ,
Respondent(s).

-and-

LUIS ANTONIO RODRIGUEZ GARCIA,
O GARCIAMARTINEZ, and STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,

Proposed Additional Respondents.

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The following papers were filed to the New York State Court Electronic Filing System (NYSCEF) as NYSCEF Doc. 1-24 and read on the Petitioner’s application for a court order pursuant to CPLR §7503 permanently staying the Respondent's application to proceed to Arbitration under the Mandatory Uninsured Motorist Endorsement, and alternative requested relief.

Upon the foregoing papers, the motion is determined as follows:

This action arises out of a motor vehicle accident that occurred on November 7, 2023. The Respondent allegedly sustained personal injuries, when he was a passenger in a vehicle owned by Proposed Additional Respondent, O GARCIAMARTINEZ and driven by Proposed Additional Respondent, LUIS ANTONIO RODRIGUEZ GARCIA. (A copy of the Police Accident Report is annexed hereto as Exhibit “B.”) The Petition asserts the following factual allegations. The vehicle was insured by Proposed Additional Respondent, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, (“STATE FARM”) as indicated by Insurance Code 328 listed on the Police Accident Report. The alleged accident occurred on entrance ramp to I-287 westbound, County of Westchester, State of New York. STATE FARM assigned claim number 32-60L2-13X to this

claim and accident. STATE FARM is the primary carrier, and provided primary SUM coverage, for the vehicle in which Respondent, DRITON HASANGJEKAJ, was a passenger. STATE FARM issued an untimely denial, which was vague in detail and language and failed to establish, with specificity, the reason and basis for the denial and/or disclaimer of coverage.¹ Petitioner received a Demand for Arbitration,² in and by which Respondent demanded arbitration to resolve his claim against Petitioner to recover uninsured motorist benefits upon the grounds that the adverse vehicle was uninsured.

Petitioner's Application:

Petitioner requests the following relief:

- (1) An Order pursuant to CPLR §7503 permanently staying the Respondent's application to proceed to Arbitration under the Mandatory Uninsured Motorist Endorsement, since the vehicle in which the Respondent was a passenger, was owned, operated and insured by the Proposed Additional Respondents, on the date of loss, and provides primary SUM coverage;
- (2) In the alternative, an Order pursuant to CPLR §7503 temporarily staying the Respondent's application to proceed to Arbitration under the Mandatory Uninsured Motorist Endorsement, pending a Framed Issue Hearing, to determine if the vehicle in which the Respondent was a passenger was insured on the date of loss, and, if so, if said insurance was primary and, if so, if the Proposed Additional Respondents tendered the policy and adding all of the Proposed Additional Respondents so that all parties will be before this Court.
- (3) Alternatively, if it is found that the Respondent is permitted to seek Arbitration under Supplementary Uninsured/Underinsured Motorist Endorsement issued by UNITED FINANCIAL CASUALTY COMPANY i/s/h/a PROGRESSIVE INSURANCE COMPANY ("PROGRESSIVE INSURANCE"), an Order temporarily staying the Arbitration from being held before the American Arbitration Association, to allow the Petitioner and Respondent the time needed to fully conduct discovery. That discovery is to consist of allowing the Petitioner the opportunity to obtain authorizations and medical reports for all of the Respondent's treating health-care providers, as well as allowing the Petitioner the opportunity to conduct physical examinations and an Examination Under Oath of the Respondent and for such other further relief as this Court may deem just and proper.

Petitioner contends that the arbitration of Respondent's Supplementary Uninsured/Underinsured Motorist claim should be permanently stayed on the grounds that STATE FARM insured the vehicle in which Respondent, DRITON HASANGJEKAJ, was a passenger on the date of the accident. Counsel contends that the investigation and documents attached to the petition demonstrate that STATE FARM insured the liable vehicle, owned by O GARCIAMARTINEZ and operated by LUIS ANTONIO RODRIGUEZ GARCIA, in this

¹ Petition Exhibit C (denial letter).

² Petition Exhibit D (Demand for Arbitration letter).

accident. Therefore, Arbitration of the Respondent's claim, against the Petitioner, must be permanently stayed since primary SUM coverage lies with STATE FARM and said primary SUM coverage has yet to be tendered and/or paid.

Alternatively, if STATE FARM contends they cancelled, reduced, denied and/or disclaimer coverage on the insurance policy for the vehicle in which Respondent, DRITON HASANGJEKAI, was a passenger, or claim that they do not insure, Petitioner requests that the Proposed Additional Respondents be added to the proceeding and that a Framed Issue Hearing be held to determine whether or not the cancellation, reduction, denial and/or disclaimer was timely, proper and/or specific, pursuant to the relevant provisions of the Vehicle and Traffic Law. Therefore, the Arbitration should be temporarily stayed pending a Framed Issue Hearing.

Finally, Petitioner's Uninsured Motorist Endorsement entitles Petitioner to an Examination Under Oath of Respondent, physical examinations by physicians selected by Petitioner, and of duly executed authorizations for Respondent's medical and hospital records, No-Fault records, and diagnostic films, pursuant to the Uninsured Motorist endorsement.³

Opposition filed by Respondent:

Counsel for the Respondent, DRITON HASANGJEKAI contends that that the proposed additional respondent STATE FARM has denied any and all applicable coverage for this date of accident as evident in the denial filed as Petitioner's Exhibit C. According to Respondent, the Proposed Additional Respondent, LUIS ANTONIO RODRIGUEZ GARCIA was driving for Lyft at the time of the accident and the Lyft policy applies. Therefore, petitioner is the proper carrier for SUM coverage and respondent's demand for SUM arbitration is proper. Alternatively, in the event that this Court finds that a framed issue hearing is necessary to determine whether or not coverage should be afforded, or if STATE FARM'S denial of coverage on the insurance policy for the vehicle in which respondent was a passenger is timely and proper, it is respectfully requested that proposed additional respondents LUIS ANTONIO RODRIGUEZ, O GARCIAMARTINEZ, and STATE FARM MUTUAL be added to this action to participate in the framed issue hearing and to be bound by the decision. Lastly, counsel confirms that Respondent is ready and willing to cooperate with petitioner to fully conduct discovery.

Opposition filed by Proposed Additional Respondents:

Counsel for the Proposed Additional Respondents LUIS ANTONIO RODRIGUEZ GARCIA, O GARCIAMARTINEZ, and STATE FARM filed opposition. Counsel contends that STATE FARM concedes that it issued a New York automobile policy of insurance to LUIS

³ Petition Exhibit A (endorsement).

ANTONIO RODRIGUEZ GARCIA (hereinafter “GARCIA”) provided uninsured/underinsured motorist coverage in the amount of \$25,000 per person/\$50,000 per accident which was in effect on November 7, 2023, and has assigned claim # 32-60L2-13X to this alleged loss. However, STATE FARM disclaims any coverage for this accident as GARCIA was driving for Lyft at the time of the subject accident. Counsel contends that PROGRESSIVE was the insurance carrier for LYFT for the subject accident. STATE FARM issued a denial of coverage based upon an exclusion in the STATE FARM policy that since the vehicle was being used and operated through LYFT at the time of the alleged accident, PROGRESSIVE would be the primary insurance policy covering any liability for this alleged accident. Under the Amendatory Endorsement 6128Q.1 to the STATE FARM policy, 2.b. Exclusion (4) reads as follows:

THERE IS NO COVERAGE FOR AN INSURED FOR DAMAGES ARISING OUT OF THE OWNERSHIP, MAINTENANCE, OR USE OF A MOTOR VEHICLE WHILE THE MOTOR VEHICLE IS BEING USED BY A TRANSPORTATION NETWORK COMPANY DRIVER WHO IS LOGGED ONTO A TRANSPORTATION NETWORK COMPANY’S DIGITAL NETWORK BUT IS NOT ENGAGED IN A TRANSPORTATION NETWORK PREARRANGED TRIP OR WHILE THE DRIVER PROVIDES A TRANSPORTATION NETWORK COMPANY PREARRANGED TRIP PURSUANT TO ARTICLE 44-B OF THE VEHICLE AND TRAFFIC LAW. (See, Proposed Additional Respondents’ Opposition Exhibit A).

Furthermore, the STATE FARM Supplementary Uninsured/Underinsured Motorist Endorsement 6163A.2 also has a policy exclusion pertaining to this loss. Specifically, Exclusion 4 to the policy (Exhibit “A”, page 3 of Endorsement 6163A.2) states: “This SUM coverage does not apply to bodily injury to an insured incurred while the insured motor vehicle is used by a transportation network company driver who is logged onto a transportation network company’s digital network but is not engaged in a transportation network company prearranged trip or while he driver provides a transportation network company prearranged trip pursuant to article 44-B of the Vehicle and Traffic Law.

Counsel also cites two provisions of the Vehicle and Traffic Law (“VTL”):

- (1) Pursuant to VTL 1693(6) “Coverage under a group policy maintained by the TNC shall not be dependent on the denial of a claim by the insurer that issued the insurance policy used to register the TNC vehicle, nor shall that insurer be required to first deny a claim.”
- (2) VTL 1695(2) states “[n]othing in this section implies or requires that an owner’s policy of liability insurance or other motor vehicle insurance policy provide coverage while the TNC driver is logged on to the TNC’s digital network, while the TNC driver is engaged in a TNC prearranged trip or while the TNC driver otherwise uses or operates a TNC vehicle to transport passengers for compensation.”

Based upon the clear exclusion contained in the STATE FARM policy, and since there is available coverage with LYFT through PROGRESSIVE for this accident, with higher policy limits covering LYFT drivers (and their passengers) under the policy when they are engaged in TNC prearranged trips, etc., they (LYFT and PROGRESSIVE) have the higher priority of coverage. Alternatively, assuming arguendo that the Court finds that STATE FARM to have a higher priority of coverage, Respondent HASANGJEKAG has settled with the tortfeasor for the policy limits of \$25,000. The plain language of Insurance Law § 3420 provides that SUM coverage is only triggered where the bodily injury liability insurance limits of the policy covering the tortfeasor's vehicle are less than the third-party liability limits of the policy under which a party is seeking SUM benefits (citing *Matter of Allstate Ins. Co. v. Rivera*, 883 NYS2d 755, 911 N.E.2d 817 [2009]). Therefore, since the bodily injury limits of the tortfeasor's policy are equal to the SUM limits of the STATE FARM policy, there is no SUM exposure in this action. Absent any other coverage exclusions, PROGRESSIVE should be required to provide underinsured motorist coverage to Respondent, DRITON HASANGJEKAJ, and STATE FARM should be absolved of any financial responsibility for any contribution for liability/damages towards this alleged accident pursuant to the terms, conditions, endorsements and exclusions in the STATE FARM policy, as well as the fact that STATE FARM has a total offset due to the settlement with the tortfeasor which is equal to the limits of the STATE FARM policy. Therefore, STATE FARM requests that the Petition be dismissed against STATE FARM, and that STATE FARM be dismissed for any further proceedings in this matter.

Decision:

A party seeking a stay of arbitration must make such an application “within twenty days after service upon him of the [arbitration] notice or demand, or he shall be so precluded” (CPLR §7503[c]). “The party seeking a stay of arbitration has the burden of showing the existence of sufficient evidentiary facts to establish a preliminary issue which would justify the stay” (*Matter of Government Empls. Ins. Co. v. Tucci*, 157 A.D.3d 679, 680 [2d Dept. 2018]). “Thereafter, the burden shifts to the party opposing the stay to rebut the prima facie showing” (*Matter of Government Empls. Ins. Co. v. Tucci*, 157 A.D.3d at 680, quoting *Matter of Merchants Preferred Ins. Co. v. Waldo*, 125 A.D.3d 864, 865 [2d Dept. 2015]). “Where a triable issue of fact is raised, the Supreme Court, not the arbitrator, must determine [such issue] 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 A.D.3d 1001, 1003 [2d Dept. 2013]).

Upon review of the record, this Court determines that STATE FARM properly disclaimed any coverage for this accident as GARCIA was driving for LYFT at the time of the subject accident. PROGRESSIVE was the insurance carrier for LYFT for the subject accident, with higher policy limits covering LYFT drivers (and their passengers) under the policy when they are engaged in TNC prearranged trips, etc., they (LYFT and PROGRESSIVE) have the higher priority of coverage. Such determination is supported by the record including, without limitation, Amendatory Endorsement 6128Q.1 to STATE FARM policy, 2.b. Exclusion (4), as well as VTL §1693(6) and VTL §1695(2).

Lastly, insofar as it is hereby determined that Respondent is permitted to seek Arbitration under PROGRESSIVE’s Supplementary Uninsured/Underinsured Motorist Endorsement, said arbitration is temporarily stayed to permit the Petitioner and Respondent to fully conduct discovery to obtain authorizations and medical reports for all of the Respondent’s treating health-care providers, as well as allowing the Petitioner the opportunity to conduct physical examinations and an Examination Under Oath of the Respondent.

Based on the foregoing, it is hereby

ORDERED that, the Petition is GRANTED TO THE LIMITED EXTENT that the Petitioner-Respondent arbitration under PROGRESSIVE’s Supplementary Uninsured/Underinsured Motorist Endorsement is stayed for a period of ninety (90) days from the receipt of service of this Decision and Order with Notice of Entry; and it is further

ORDERED that, within thirty (30) days hereof, Petitioner shall serve a written discovery demand for authorizations, medical reports for all of the Respondent’s treating health-care providers, as well as noticing any physical examinations and an Examination Under Oath. It is further

ORDERED that within thirty (30) days of such demand, Respondent shall serve responses to discovery demands and confirm dates for physical examinations and an Examination Under Oath to be completed within ninety (90) days hereof. All such outstanding discovery shall be completed within ninety (90) days hereof, absent good cause. It is further

ORDERED that, Petitioner shall serve a copy of this Decision and Order with Notice of Entry, and written discovery demands upon Respondent within ten (10) days hereof.

ORDERED that, any other requested relief not specifically granted herein is denied.

The foregoing constitutes the Decision and Order of this Court.

Dated: December 13, 2024
White Plains, New York

ENTER :



HON. THOMAS QUIÑONES, J.S.C.

TO:

Filed to NYSCEF