

Matter of Nationwide Ins. Co. of Am. v Gomez
2024 NY Slip Op 35681(U)
September 5, 2024
Supreme Court, Nassau County
Docket Number: Index No. 605877/2024
Judge: Denise L. Sher
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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK

PRESENT: HON. DENISE L. SHER
Supreme Court Justice

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In the Matter of the Application for an Order
Staying Arbitration between
NATIONWIDE INSURANCE COMPANY OF
AMERICA,

TRIAL/IAS PART 30
NASSAU COUNTY

Petitioner,

Index No.: 605877/2024
Motion Seq. No.: 01
Motion Date: 04/30/2024
XXX

- against -

ENID GOMEZ,

Respondent.
.....

The following papers have been read on this application:

	Papers Numbered
Notice of Petition, Petition and Exhibits	<u>1</u>

Upon the foregoing papers, it is ordered that the application is decided as follows:

Petitioner moves, pursuant to CPLR §§ 7503(c) and 3102(c), for an order granting a permanent stay of the uninsured/underinsured motorist arbitration between petitioner and respondent; or, in the alternative, moves, pursuant to CPLR §§ 7503(c) and 3102(c), for an order granting a temporary stay pending a preliminary hearing with respect to the underlying issues of insurance coverage; or, in the alternative, if the parties are directed to proceed to arbitration, moves for an order compelling respondent to submit to an Examination Under Oath and an independent physical examination, to provide authorizations for the relevant no-fault file,

employment records and/or school records and medical records, including authority to examine all original diagnostic tests and films. No opposition was submitted to the application.

In support of the application, counsel for petitioner asserts, in pertinent part, that, “[o]n or about March 19, 2024, NATIONWIDE received a letter demanding SUM arbitration by the attorneys for the Respondent, The Odierno Law Firm, PC. This letter was mailed to NATIONWIDE via certified mail, return receipt requested.... The claim of the Respondent arises out of an accident that took place in the Town of Hempstead, County of Nassau, State of New York on or about May 1, 2023. On that date the Respondent was a passenger in a vehicle operated by Faisal Khyal.... At the time of the accident the vehicle operated by Faisal Khyal, in which the Respondent was a passenger, was insured under a policy issued by NATIONWIDE.... The policy issued by NATIONWIDE applicable to the claim of the Respondent is a Connecticut policy and satisfies the requirements of Insurance Law § 5107. The policy also contained the applicable Connecticut Uninsured/Underinsured Motorist Coverage endorsement providing for protections against bodily injuries arising from accidents with uninsured/underinsured motorists.... The Respondent, as an ‘insured’ as defined by the endorsement of the policy, seeks SUM benefits under the SUM endorsement of said policy.... As set forth in the affirmation of NATIONWIDE claim representative Kelly Patterson Lanes, ..., she reviewed the Respondent’s SUM claim including the policy in effect on the date of the Respondent’s accident. NATIONWIDE claim representative Kelly Patterson Lanes confirmed the applicable policy in which the Respondent is seeking SUM benefits is a Connecticut policy. Pursuant to the language in the policy, the parties must agree to arbitration, which, to date, they have not. Therefore, as there is no agreement to arbitrate, NATIONWIDE is entitled to a permanent stay of

the arbitration. [citation omitted]. Furthermore, it is respectfully submitted the Respondent does not have a valid claim for SUM coverage and arbitration in the State of New York. The policy of insurance relating to the vehicle involved in the accident is a Connecticut policy and it is submitted the proper forum for the Respondent's claim for SUM benefits would be in the State of Connecticut. If a permanent stay is not granted, it is submitted the arbitration be stayed temporarily to permit a framed evidentiary hearing where Petitioner will produce the NATIONWIDE claim representative to testify regarding Respondent's Connecticut Policy in effect on the date of accident. In addition, should a permanent stay not be granted, a temporary stay of arbitration is also necessary for discovery purposes as to the determination of coverage and the Respondent's injuries. Due to the time constraints in bringing the instant proceeding through CPLR Section 7503 and the foregoing background of this case, it has not been possible to conduct full discovery. The NATIONWIDE policy at issue, Part E, Duties After an Accident or Loss, requires any person seeking coverage under the policy, which would include but is not limited to providing copies of all wage and medical records, submit to an examination under oath as often as reasonably requested, and submit to medical examinations. Therefore, it is necessary to stay, at least temporarily, the instant arbitration proceeding so the discovery and coverage issues can be resolved. While the 20 day time limitation in which to serve a petition to stay arbitration under CPLR Section 7503(c) does not apply as the parties have not agreed to arbitrate [citation omitted], nevertheless this petition is timely under CPLR Section 7503(c) as it has been made within twenty days from which the petitioner received the Demand for Arbitration from Respondent's attorney." See Petitioner's Petition Exhibits A-D.

As previously indicated, no opposition was submitted to the application.

Therefore, based upon the above, petitioner's application, pursuant to CPLR §§ 7503(c) and 3102(c), for an order granting a permanent stay of the uninsured/underinsured motorist arbitration between petitioner and respondent, is hereby **GRANTED**.

This constitutes the Decision and Order of this Court.

ENTER:

A handwritten signature in cursive script, appearing to read "Denise L. Sher", written over a horizontal line.

DENISE L. SHER, J.S.C.

XXX

Dated: Mineola, New York
September 5, 2024

ENTERED

Sep 09 2024

NASSAU COUNTY
COUNTY CLERK'S OFFICE