

Matter of Progressive Advanced Ins. Co. v Mosley

2025 NY Slip Op 34853(U)

December 15, 2025

Supreme Court, New York County

Docket Number: Index No. 652715/2023

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

THE PROGRESSIVE ADVANCED INSURANCE
COMPANY,

Petitioner,

- v -

BRETT MOSLEY, JAMES PERSAD, LEISURE
TRANSPORT INC, AMERICAN INTER-FIDELITY
EXCHANGE, CLEAR BLUE INSURANCE COMPANY, and
PORT LEAD TRANSPORT, INC.,

Respondents.

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INDEX NO. 652715/2023
MOTION DATE 08/28/2025
MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75

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

This is a proceeding pursuant to CPLR 7503, pursuant to which the petitioner, The Progressive Advanced Insurance Company (Progressive), seeks a permanent stay of arbitration of a claim for uninsured motorist (UM)/supplementary underinsured motorist (SUM) benefits that had been demanded by its insured, the respondent Brett Mosley, in connection with a June 24, 2022 motor vehicle accident. In an order dated March 22, 2024 (MOT SEQ 001), this court granted Progressive’s motion to join James Persad, Leisure Transport, Inc. (Leisure), and American Inter-Fidelity Exchange (AIFE) as additional respondents, and simultaneously granted the petition to the extent of temporarily staying the arbitration, pending a framed-issue hearing on the issue of whether AIFE provided liability coverage for bodily injury to Leisure that was in effect at the time of the underlying accident, and covered Mosley’s claims. Prior to the commencement of that hearing, however, Progressive moved for leave to serve and file a supplemental and amended notice of petition and an amended petition (MOT SEQ 002)

permitting it to add Clear Blue Insurance (Clear Blue) and Port Lead Transport, Inc. (Port Lead), as additional respondents in this proceeding, since Port Lead's trailer was attached to Leisure's tractor at the time of the subject accident. The framed-issue hearing that this court initially directed thus was never conducted. In an order dated June 16, 2025, the court granted Progressive's motion, and amended the caption accordingly. The amended petition is granted to the extent that the court directs a framed-issue hearing on the issue of coverage.

On June 25, 2025, Progressive noticed the amended petition to be heard by the court (MOT SEQ 003). It served the supplemental notice of petition and amended petition in the manner that the court had directed in the June 16, 2025 order. On July 9, 2025, Clear Blue and Port Lead served their opposition to the amended petition, contending that Port Lead's 2003 Freightliner, Vehicle Identification Number 1FUJBBCG13LK58722, which purportedly was involved in the subject accident, was not enumerated as a scheduled vehicle on the relevant Clear Blue policy. On August 20, 2025, AIFE served its opposition to the amended petition, contending that it had provided only "non-trucking liability" coverage, colloquially known as "bobtail coverage," to Leisure that only provided liability coverage to an otherwise insured truck when that truck is not conducting business or carrying freight. It argued that, at the time of the underlying accident, the tractor portion of the truck that it insured for Leisure was, in fact, conducting business and carrying freight, as stated in the relevant MV-104 motor vehicle accident report, since it was hauling a trailer that was owned by Port Lead. On August 27, 2025, Mosley served his opposition to the amended petition. In reply to the opposition papers served by the several respondents, Progressive argued that, as of the date of the accident, Clear Blue had in effect an MCS-90 endorsement, which provided liability coverage to Port Lead in connection with the subject accident, despite the fact that Port Lead's trailer was not enumerated as a "scheduled" vehicle in the underlying Clear Blue policy. It further contended that there is a difference between "non-trucking liability coverage" and "bobtail coverage." With

respect to the coverage that AIFE provided to Leisure, Progressive, quoting from an internet website dedicated to trucking insurance issues, argued that

“[w]hen it comes to trucking insurance, bobtail insurance and Non-Trucking liability insurance serve different purposes. Bobtail insurance is designed for drivers who are operating their trucks without a trailer attached, such as when driving between loads or returning home after a delivery. It provides liability coverage for accidents that occur while the truck is not under dispatch. Non-trucking liability insurance, on the other hand, is for personal use of the truck, regardless of whether a trailer is attached. It covers liability claims that may arise from accidents while the truck is not being used for business purposes. Understanding these distinctions is crucial for trucking professionals to ensure they have the right coverage for their vehicles in all situations.”

Progressive thus concluded that AIFE’s liability coverage may indeed have been triggered in connection with the subject accident because Leisure conceivably was, at the time, utilizing its tractor for personal use, despite the tractor’s attachment to Port Lead’s trailer, which allegedly was not under dispatch for the trailer-trucking company. Progressive consequently argued that a framed-issue hearing on the issue of whether AIFE or Clear Blue provided coverage for the accident was appropriate.

As explained in this court’s March 22, 2024 order, where a UM/SUM insurer meets its initial burden of proving that an alleged offending vehicle, other than the vehicle that it covered, was insured by another carrier, the burden shifts to the respondent carrier to prove that the offending vehicle was not insured at the time of the accident (*see Matter of Allstate Ins. Co. v Frederick*, 266 AD2d 283, 284 [2d Dept 1999]). Progressive, by submitting the relevant certificate of insurance and MCS-90 endorsement, satisfied its initial burden of establishing that Leisure’s tractor and Port Lead’s trailer were insured with respect to liability for bodily injury claims. Although AIFE, on behalf of Leisure, and Clear Blue, on behalf of Port Lead, contended that they provided no relevant coverage to their insured, “it would be reasonable to hold a framed issue hearing,” as there are sufficient facts in dispute to warrant one (*Matter of Travelers Home & Mar. Ins. Co. v Barowitz*, 208 AD3d 1074, 1075 [1st Dept 2022]). Specifically, there are factual issues as to whether Leisure’s tractor was being employed for Leisure’s “personal

use” at the time of the accident, and whether Port Lead’s trailer, under the circumstances presented, was covered by the MCS-90 endorsement.

Accordingly, it is,

ORDERED that the amended petition is granted only to the extent that the arbitration is temporarily stayed, pending a framed-issue hearing on the issues of whether American Inter-Fidelity Exchange provided liability coverage for bodily injury to Leisure Transport, Inc., that was in effect at the time of the underlying accident, and which provided coverage in connection with the underlying accident, and whether Clear Blue Insurance provided liability for bodily injury to Port Lead Transport, Inc., pursuant to an MCS-90 endorsement, that was in effect at the time of the underlying accident, and which provided coverage in connection with the underlying accident; and it is further,

ORDERED that a Judicial Hearing Officer (“JHO”) or Special Referee shall be designated to hear and report to this Court on the following individual issues of fact, which are hereby submitted to the JHO/Special Referee for such purpose: whether American Inter-Fidelity Exchange provided liability coverage for bodily injury to Leisure Transport, Inc., that was in effect at the time of the underlying accident and which provided coverage in connection with the underlying accident, and whether Clear Blue Insurance provided liability for bodily injury to Port Lead Transport, Inc., pursuant to an MCS-90 endorsement, that was in effect at the time of the underlying accident, and which provided coverage in connection with the underlying accident; and it is further,

ORDERED that this matter is hereby referred to the Special Referee Clerk (Room 119M, 646-386-3028 or spref@nycourts.gov) for placement at the earliest possible date upon which the calendar of the Special Referees Part (Part SRP), which, in accordance with the Rules of that Part (which are posted on the website of this court at www.nycourts.gov/supctmanh at the “References” link under “Courthouse Procedures”), shall assign this matter to an available JHO/Special Referee to hear and report as specified above; and it is further,

ORDERED that counsel shall immediately consult one another and counsel for petitioner shall, within 15 days from the date of this Order, submit to the Special Referee Clerk by fax (212-401-9186) or email, an Information Sheet (which can be accessed at the "References" link on the court's website) containing all the information called for therein and that, as soon as practical thereafter, the Special Referee Clerk shall advise counsel for the parties of the date fixed for the appearance of the matter upon the calendar of the Special Referees Part; and it is further,

ORDERED that the parties shall appear for the reference hearing, including with all witnesses and evidence they seek to present, and shall be ready to proceed, on the date first fixed by the Special Referee Clerk subject only to any adjournment that may be authorized by the Special Referees Part in accordance with the Rules of that Part; and it is further,

ORDERED that the hearing will be conducted in the same manner as a trial before a Justice without a jury (CPLR 4320[a]) (the proceeding will be recorded by a court reporter, the rules of evidence apply, etc.) and, except as otherwise directed by the assigned JHO/Special Referee for good cause shown, the trial of the issues specified above shall proceed from day to day until completion; and it is further,

ORDERED that any motion to confirm or disaffirm the Report of the JHO/Special Referee shall be made within the time and in the manner specified in CPLR 4403 and Section 202.44 of the Uniform Rules for the Trial Courts.

This constitutes the Decision and Order of the court.

JOHN J. KELLEY, J.S.C.

<u>12/15/2025</u> DATE				
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE