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| <b>United Fin. Cas. Co. v Wright</b>                                                                                                                                                                                           |
| 2025 NY Slip Op 35648(U)                                                                                                                                                                                                       |
| January 7, 2025                                                                                                                                                                                                                |
| Supreme Court, Bronx County                                                                                                                                                                                                    |
| Docket Number: Index No. 811422/2024E                                                                                                                                                                                          |
| Judge: Ashlee Crawford                                                                                                                                                                                                         |
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| This opinion is uncorrected and not selected for official publication.                                                                                                                                                         |

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX: PART 21

-----X  
UNITED FINANCIAL CASUALTY COMPANY,

Petitioner(s),

-against-

**DECISION AND ORDER  
ON MOTION**

ANDREA WRIGHT,

**Index No. 811422/2024E  
Motion Seq. No. 001**

Respondent(s).

-and-

DARREA BATES and PROGRESSIVE GROUPS,

Proposed Additional Respondent(s).

-----X  
**ASHLEE CRAWFORD, J.:**

Petitioner United Financial Casualty Company (“United”) commenced this proceeding pursuant to CPLR § 7503 to stay arbitration demanded by respondent Andrea Wright on her claim for uninsured/underinsured motorist coverage. Wright and proposed additional respondents Darrea Bates and Progressive Groups (“Progressive”) have not appeared.

Background

At issue is an uninsured/underinsured motorist endorsement issued by United to Lyft, Inc. (“Lyft”) providing uninsured motorist coverage for the relevant period (Ex. E to Verified Petition [Policy]).

On March 31, 2023, respondent allegedly was a Lyft passenger in a 2012 Honda Odyssey owned and operated by non-party David Sosa while Sosa was completing her Lyft ride (Verified Petition ¶ 9; Ex. A to Petition [Demand for Arbitration], Ex. B to Verified Petition [Notice of Intention to Make Claim]). Respondent alleged in her Notice of Intention to Make Claim that a

second vehicle, a 2016 Honda Civic, struck Sosa's vehicle at the intersection of East 239<sup>th</sup> Street and Furman Avenue, Bronx, New York (Notice of Intention to Make Claim). Following the collision, Sosa took photographs of the insurance information and registration of the Civic, as well as of the damage to his vehicle, and provided them to his insurer, United (Verified Petition ¶¶ 12-13; Exs. C & D to Verified Petition [photos]).

Thereafter, respondent submitted a claim to United under Lyft's uninsured motorist policy and demanded arbitration of the claim (Ex. A to Verified Petition [Demand for Arbitration]; see arbitration provision in the Policy at ¶ 11). This special proceeding ensued.

#### Discussion

United argues that respondent has not established a valid claim for uninsured motorist coverage. United asserts that it learned, after investigation, that the Honda Civic was owned and operated by Bates, and insured by Progressive (Verified Petition ¶ 12; Ex. C to Verified Petition [Photographs of Second Vehicle]; Ex. E to Verified Petition [Insurance Carrier Report]). United contends that the accident was not a "hit-and-run," and that Bates is the sole liable party (Verified Petition ¶ 15).

United asserts that it has established, *prima facie*, the existence of insurance coverage on the second vehicle and that the burden now shifts to respondent to prove the vehicle was not insured. To the extent respondent is unable to meet her burden, United asks the Court to permanently stay the arbitration or, alternatively, to temporarily stay the arbitration pending a framed-issue hearing. If, after a hearing, the Court directs the parties to proceed with arbitration, United requests that respondent produces discovery pre-arbitration in accordance with the terms of the Policy, including medical records and authorizations, and to submit to an examination under oath (EUO) and physical examinations (IME).

“[A]n insurer seeking a stay of arbitration has the burden of establishing evidentiary facts sufficient to warrant a stay” (Matter of Empire Mut. Ins. Co. [Greaney--National Union Fire Ins. Co. of Pittsburgh], 156 AD2d 154, 155 [1st Dept 1989] [citations omitted]). “The burden of proving the insured status of the offending vehicle is on the insurer seeking the stay, not upon the insured” (id. [citations omitted]). “Where, however, there is a genuine triable issue[,], the appropriate procedure is to stay arbitration pending a trial of the threshold issue” (AIU Ins. Co. v Cabreja, 301 AD2d 448, 449 [1st Dept 2003] [internal citation and quotation marks omitted]; see also Matter of Progressive Ins. Co. v Bartner, 171 AD3d 598 [1st Dept 2019]).

Here, United has met its prima facie burden only to the extent that a temporary stay of the arbitration is appropriate pending the completion of discovery and a framed-issue hearing, and respondents do not oppose the petition (see Matter of Progressive Ins. Co. v Bartner, 171 AD3d at 598). For these reasons, it is hereby

**ORDERED**, that United’s petition to stay the uninsured motorist arbitration is GRANTED only to the extent the arbitration is temporarily stayed pending the completion of discovery and a framed-issue hearing on whether there is additional coverage for respondent to pursue; and it is further

**ORDERED**, that proposed additional respondents Darrea Bates and Progressive Groups are joined as additional respondents and the caption shall be amended as follows:

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X  
UNITED FINANCIAL CASUALTY COMPANY,

Petitioner,

ANDREA WRIGHT,

Respondent,

-and-

DARREA BATES and PROGRESSIVE GROUPS,

Additional Respondents.

-----X  
; and it is further

**ORDERED**, that petitioner shall file an amended notice of petition and amended petition and shall serve same, together with a copy of this order with notice of entry, upon respondent and additional respondents within 30 days of entry of this order; and it is further

**ORDERED**, that the parties shall proceed with discovery pending the next appearance; and it is further

**ORDERED**, that all parties shall appear for a preliminary conference on March 19, 2025, at 9:30 AM.

This constitutes the decision and order of the Court.



**HON. ASHLEE CRAWFORD, A.J.S.C.**

Dated: Bronx, New York  
January 7, 2025