

Geico Gen. Ins. Co. v Adams
2015 NY Slip Op 30996(U)
June 4, 2015
Supreme Court, New York County
Docket Number: 650344/2015
Judge: Joan B. Lobis
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6**

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GEICO GENERAL INSURANCE COMPANY,

Petitioner,

Index No. 650344/2015

-against-

Decision and Order

DERRICK ADAMS,

Respondent,

AMERIPRISE INSURANCE COMPANY, CHANDAN MAHAJAN, LIBERTY MUTUAL FIRE INSURANCE COMPANY, LYNNELL JOHNSON, ZIPCAR NEW YORK, STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, JENNIFER SOTO, RONALD CALDERON, GEICO INDEMNITY COMPANY, ABOU DIOP, GEICO INDEMNITY COMPANY and DARRELL LYONS,

Proposed Additional Respondents,

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JOAN B. LOBIS, J.S.C.:

In this special proceeding pursuant to Article 75 of the Civil Practice Law and Rules, GEICO General Insurance Company petitions the Court for an order permanently staying the uninsured motorist arbitration demanded by respondent Derrick Adams. In the alternative, petitioner requests the addition of Ameriprise Insurance Company, Chandan Mahajan, Liberty Mutual Fire Insurance Company, Lynnell Johnson, Zipcar New York, State Farm Mutual Automobile Insurance Company, Jennifer Soto, Ronald Calderon, GEICO Indemnity Company, Abou Diop, GEICO Indemnity Company, and Darrel Lyons, as additional respondents, and a temporary stay pending a framed issue hearing to determine whether there was valid insurance coverage for the offending vehicles on the date of respondent's accident and whether the accident involved a hit and run driver. Petitioner also asks that if there is no applicable insurance for the

adverse vehicles, the Court stay this matter until respondent provides relevant discovery relating as required under the policy, including but not limited to an examination under oath and independent medical examinations. Derrick Adams, State Farm Mutual Automobile Insurance Company (State Farm), Jennifer Soto, Ronald Calderon, and Chandan Mahajan oppose the petition. Remaining proposed additional respondents submit no opposition.

This proceeding arises out of a March 16, 2010, accident on the southbound Major Deegan Expressway at or near exit #3 in Bronx County. The accident involved at least six vehicles. Respondent's vehicle was listed as number 5 in the police report. According to a statement in the police report, the initial collision was caused by an unidentified motor vehicle which struck the vehicle owned and operated by proposed additional defendant Chandan Mahajan. This caused a chain reaction involving the respondent and the proposed additional respondents. The unidentified vehicle then left the scene of the collision. The other vehicles were either operated or owned by, or had insurance codes from, the proposed additional respondents.

Petitioner provided respondent with an insurance policy that included uninsured motorist coverage in the amounts of \$25,000 per person and \$50,000 per accident. On January 16, 2015, petitioner received a demand for uninsured motorist arbitration dated January 5, 2015. Respondent claimed personal injuries as a result of the accident. Petitioner now requests a permanent stay of arbitration, claiming that the adverse vehicles in the accident were all insured.

In opposition to the petition, respondent Derrick Adams claims that a hit and run vehicle is considered an uninsured vehicle and that Section 3420(f)(1) of the Insurance Law

applies. Therefore he maintains that he is entitled to the minimum \$25,000 independent of any future settlement or remedy available.

State Farm Mutual Automobile Insurance Company, Jennifer Soto, and Ronald Calderon oppose the motion. State Farm concedes that a valid insurance policy for Ronald Calderon existed at the time of the accident and that there is no reason that Calderon, Soto, or State Farm should be added to the action.

Chandan Mahajan opposes the motion as well. He argues that petitioner does not set forth enough facts to stay arbitration. He asserts that the petition does not make any allegations that “impute any form of breach of duty, negligence or liability against this party except in the broadest sense.” He claims that there is no evidence demonstrating threshold liability on the part of Mr. Mahajan. Mr. Mahajan contends that he was struck from behind and that “‘it is well settled’ that a vehicle that is struck from behind will not be forced to bear responsibility for the occurrence [.]” He maintains that the Court must deny the request for a permanent stay, temporary stay, and framed issue hearing.

In reply to Derrick Adams, petitioner reasserts the arguments in the petition. Petitioner does not reply to State Farm, Jennifer Soto, and Ronald Calderon. In reply to Mr. Mahajan, petitioner claims that the proposed additional respondent did not understand the purpose of the petition. Petitioner states that it is not seeking to hold Mr. Mahajan liable or responsible and does not allege any potential liability. It claims that had he simply shown valid insurance coverage it would not have sought to add him as a respondent.

The party seeking a stay of arbitration has the burden of showing sufficient facts to establish justification for the stay. AIU Ins. Co. v. Cabreja, 301 A.D.2d 448, 449 (1st Dep't 2003). When there is a genuine triable issue, arbitration is to be stayed pending a hearing on the threshold issue. Empire Mut. Ins. Co. v. Zelin, 120 A.D.2d 365, 366 (1st Dep't 1986). By producing a police accident report, petitioner makes a prima facie showing that the proposed additional respondent insured an offending vehicle and should be added as a party. See Utica Mut. Ins. V. Colon, 25 A.D.3d 617 (2d Dep't 2006). The burden then shifts to the proposed additional respondent to establish a lack of coverage. Id.

Though petitioner does not contest respondent's claim that if there was a hit-and-run it must pay \$25,000 to respondent, there is a genuine triable issue as whether there was a hit-and-run. Therefore, a temporary stay is warranted to determine whether the proposed additional respondents had valid insurance coverage at the time of the accident and as to whether a hit-and-run accident occurred. As State Farm, Jennifer Soto, and Ronald Calderon concede that they have a valid insurance policy, the Court denies the petition in so far as it relates to them. Mr. Mahajan objects to being added as a proposed additional respondent under the belief that the framed issue hearing would be to determine liability. He did not, however, address the issue of a framed issue hearing for the purposes of determining if there was insurance coverage or if there was a hit-and-run accident. Remaining proposed additional respondents submit no papers, so they are also added for this purpose. Accordingly, it is

ORDERED that the petition is granted to the extent of staying the petition temporarily; adding proposed respondents as parties with the exception of State Farm, Jennifer

Soto, and Ronald Calderon; and referring the matter to a Special Referee to hear and report with recommendations, or hear and determine, if the parties so stipulate pursuant to C.P.L.R. § 4317, whether there was a hit-and-run accident and whether the new respondents had valid insurance coverage at the time of the accident; and it is further

ORDERED that counsel for Petitioner shall, within 15 days from the date of entry, serve a copy of this order with notice of entry, together with a completed Special Referee Information Sheet upon the Special Referee Clerk in the Motion Support Office to arrange a date for the reference to a Special Referee.

Dated: *June 4*, 2015

ENTER:



JOAN B. LOBIS, J.S.C.