

SCAN

SHORT FORM ORDER  
SUPREME COURT - STATE OF NEW YORK

Present:  
**HON. BRUCE D. ALPERT**

Justice  
TRIAL/IAS, PART 7  
NASSAU COUNTY

In the Matter of the Application of  
GOVERNMENT EMPLOYEES INSURANCE  
COMPANY,

Petitioner,

Index No. 1289/03

-against-

**Motion Sequence No. 1**

PEDRO FLEURELUS and ULIO FLEURELUS,

Respondents,

Motion Date: March 19, 2003

-and-

AIU INSURANCE COMPANY  
and ORLAND L. HAUGTON,

Proposed Additional Respondents.

The following papers read on this petition to stay arbitration:

Notice of Petition	X
Answering Papers	X

Upon the foregoing papers it is ordered that the petitioner's application to stay arbitration of the respondents' claims for uninsured motorist benefits is granted pending the latters' submission to oral and physical examination and exchange of duly executed and notarized authorizations for the release of the respondents' respective related medical records, inclusive of diagnostic testing.

Arbitration is also stayed pending a framed issue hearing to determine whether the offending motorist was insured on the date of loss. (see, generally, Matter of Motor Vehicle Accident Indemnification Corporation [Malone], 16 NY2d 1027)

The petitioner predicates the instant special proceeding upon the assertion that the injuries, if any, sustained by the respondents in an underlying automobile accident fall beyond the ambit of the uninsured motorist endorsement contained within its insured's policy. In support of its position the petitioner submits, inter alia, a copy of the applicable Police Accident Report (MV104AN) which indicates that the offending motor vehicle was insured through the Assigned Risk Plan. In addition, the Registration Record for the offending vehicle indicates that it was insured by AIU Insurance Company (hereinafter "AIU").

The petitioner's submission constitutes prima facie proof that the offending vehicle was insured on the date of loss. (see, Brogan v New Hampshire Insurance Company, 250 AD2d 562, lv den 92 NY2d 810; Matter of State Farm Mutual Automobile Insurance Company v Yeglinski, 79 AD2d 1029; Matter of Safeco Insurance Company [Testagrossa], 67 AD2d 979; see also, Matter of the Arbitration between Empire Insurance Company [Narain], 193 AD2d 447 [1st Dept.]) Consequently, the evidentiary burden shifts to AIU, as the purported insurer, to demonstrate that it never insured the vehicle at issue, or that its coverage was properly terminated prior to the date of the

underlying occurrence. (see, Matter of CGU Ins. Co. v Greatheart, 301 AD2d 649; Matter of Wausau Insurance Company v Predestin, 114 AD2d 900)

The stay herein imposed is expressly conditioned upon the petitioner's timely compliance with the following directives: (1) within forty five (45) days of the date hereof, the petitioner shall serve a copy of this Order and the papers on which same was based on Orland L. Haugton, the owner of the alleged offending motor vehicle, and AIU Insurance Company, its purported insurer, such service to be effectuated in the same manner as service of process (see, Matter of Liberty Mutual Insurance Company [Markovich], 214 AD2d 734); and (2) within seventy five (75) days of the date hereof, the petitioner shall serve and file a Note of Issue and pay the associated fee.

Upon its timely compliance with the preceding directives, the proposed additional parties shall be added to this proceeding as additional parties respondent.

As hereinabove noted, arbitration has also been stayed pending the respondents' submission to physical and oral examination and transmission of duly executed and notarized authorizations. This aspect of the subject stay is conditioned upon the service by the petitioner of notices for such contractual discovery within thirty (30) days after receipt of the applicable authorizations.

Dated: June 2, 2003

  
\_\_\_\_\_  
J.S.C.  
**ENTERED**

JUN 05 2003  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE