

SHORT FORM ORDER

Scanned

SUPREME COURT OF THE STATE OF NEW YORK

Present:

**HON. LAWRENCE J. BRENNAN
Acting Justice Supreme Court**

-----x
**In the Matter of the Application for a stay of
Arbitration of AUTO ONE INSURANCE COMPANY,**

TRIAL PART: 44

NASSAU COUNTY

INDEX NO.: 008453/05

Petitioner,

MOTION DATE: 7-19-05

-against-

SUBMIT DATE: 7-26-05

SEQ. NUMBER - 001

HEATHER MANN,

Respondent,

-and-

**ABRAHAM TOURE, MARTINE MICHAEL-TOURE,
CLARENDON NATIONAL INSURANCE COMPANY,
MIC PROPERTY AND CASUALTY INSURANCE
COMPANY, INTEGON INSURANCE COMPANY,**

Proposed Additional Respondents.

-----x

The following papers have been read on this motion:

- Notice of Motion, dated 5-26-05..... 1**
- Affirmation in Opposition, dated 7-18-05 2**

Petitioner Auto One Insurance Company's (hereinafter Auto One) application for an Order, pursuant to CPLR Article 75, to permanently stay arbitration of a relevant uninsured/underinsured arbitration, or, in the alternative, to order discovery from the Defendant Heather Mann, is determined as hereinafter set forth.

A hearing is required on the issue of whether Respondent Heather Mann (hereinafter Mann), Petitioner Auto One's insured, has a right to proceed to uninsured motorist arbitration.

In the interim, the demanded arbitration is stayed pending resolution of the issues raised.

On January 12, 2005, Respondent Heather Mann was involved in a two vehicle car accident in Hempstead, New York, with a vehicle registered in Texas, owned by the proposed additional Respondent Martine Michael-Toure, and operated by proposed additional Respondent Abraham Toure (hereinafter Abraham Toure).

On May 18, 2005, petitioner filed a demand for uninsured motorist arbitration for her damages. Petitioner Auto One claims that it is not necessary for them to arbitrate under the policy inasmuch as Respondent Toure, the other driver, was insured by the Proposed Additional Respondents MIC Property and Casualty Insurance Company and Integon Insurance Company (hereinafter MIC) on the date of the accident.

Respondent Mann opposes Auto One's petition to permanently stay arbitration, stating that Respondent Martine Michael-Toure failed to have insurance coverage for the vehicle registered in Texas on the date of the accident. Respondent Mann's counsel supports this position by annexing an *uncertified* copy of a MV 104A Amended Police Report, which was unaccompanied by an explanatory overlay sheet. The mere recitation in this report that the Respondent Toure was given a summons for an uninsured vehicle is neither probative nor dispositive of the issue. Nonetheless, apparently relying on it, the Respondent Mann filed for uninsured motorist benefits from her own automobile insurer, Petitioner Auto One.

Proposed Respondents MIC Property and Casualty Insurance Company and Integon Insurance Company (hereinafter MIC), which are apparently one entity, and are represented by the same counsel, oppose this application.

The other proposed additional Respondent, Clarendon National Insurance Company (hereinafter Clarendon), has neither appeared nor responded to the petitioner, although it appears that a copy of the petition was mailed to it by certified mail, return-receipt requested.

Respondent MIC's position is that the policy which MIC wrote for Respondent Toure's wife, Martine Michel-Toure, the Respondent, did not take effect until eight days after the accident. The effective policy dates were from January 20, 2005 to January 20, 2006; however, the accident took place on January 12, 2005.

In support of their position, the proposed additional Respondents MIC submitted an "Automobile Policy-Change Interface" form indicating a name change. However, the name-change form is neither probative, self-authenticating, nor dispositive of the issue of Respondent Abraham Toure's and Respondent Martine Michel-Toure's status as possible "insureds" of Respondent MIC on the date of the accident.

Furthermore, neither of the documents attached to Proposed Respondents MIC's Exhibit B are copies of the actual insurance policy, as proffered in counsel's affirmation in support, but are merely incidental forms used by these insurance companies for their internal processes.

In addition, there is no affidavit of merits from an authorized representative of either of the insurers properly attesting to its position concerning any of the many significant and

relevant facts herein. The papers are defective for purposes of this motion.

All insurers which are claimed to have provided offending vehicle coverage and their insureds are hereby added as necessary parties (see CPLR §1001), provided petitioner obtains jurisdiction over such parties pursuant to CPLR Art. 3, by service of a copy of this order and all papers upon which it is based, within 20 days after entry. Failure to add such parties may result in a dismissal based upon the failure to add a necessary party (see CPLR §1003).

There shall be responses to the petition served by the properly served additional respondents. Such responses shall be served no later than 20 days after jurisdiction has been obtained. The responses by purported insurers shall include complete copies of all policies, declaration sheets and other documentation, together with appropriate accompany affidavits attesting to completeness and accuracy of the documents as well as to the facts relied upon in support of claims of non-coverage.

Petitioner shall serve and file a Note of Issue no later than 90 days after entry of this order, in default of which the action shall be deemed abandoned (see CPLR §3216). A copy of this order shall accompany the Note of Issue when filed, accompanied by proof that a copy has been mailed to all parties to the original petition within 15 days after entry.

Another issue has been raised by Petitioner Auto One concerning the failure of the Respondent Heather Mann to have cooperated with it in appearing for a statement under oath and medical examination(s). This is more properly addressed either to the trial court, if the petition is denied, or by an appropriate additional future motion to the IAS Justice. In that

sense, the Petitioner shall have the right to renew that branch of the petition. Nevertheless, the Court notes that Respondent Mann would be well-served to cooperate with the terms of her policy in this regard.

Subject to the discretion of the Justice there presiding, this matter shall appear on the calendar of Calendar Control Part for November 23, 2005.

This shall constitute the Decision and Order of this Court

DATED: September 26, 2005

TO: Jeena R. Belil, Esqs.
Attorney for Petitioner
Auto One Insurance Co.
201 Old Country Road, Ste. 105
Melville, NY 11747

Jeffrey S. Wasserman, Esq.
Attorneys for Respondent
1565 Franklin Ave., Ste. 100
Mineola, NY 11501

American Arbitration Assoc.
65 Broadway, 15th Floor
New York, NY 10006

Abraham Toure
594 Rose Blvd.
Baldwin, NY 11510

ENTER



HON. LAWRENCE J. BRENNAN
Acting Supreme Court Justice

ENTERED

SEP 28 2005

NASSAU COUNTY
COUNTY CLERK'S OFFICE

Martine Michel-Toure
139-06 34th Rd., #C5
Flushing, NY 11354

New York State
Department Of Insurance
Corporate Affairs Bureau
One Commerce Plaza
Albany, NY 12257