

SCAN

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present: HON. JOHN P. DUNNE, Justice**

**TRIAL/IAS, PART 8**

**In the Matter of the Application of  
ENCOMPASS INSURANCE CO.  
and NATIONAL BEN FRANKLIN  
INSURANCE CO. OF ILLINOIS**

Petitioners(s)

**Index No. 533/05  
Motion Seq. 1  
Motion submission: 2/16/05  
Notice of Petition to stay  
arbitration**

**-against-**

**To Stay the Uninsured Motorist Arbitration of  
MELISSA HABIBI**

Respondent(s)

The following papers read on this motion:

- Notice of Petition.....X
- Answering Affidavits.....X
- Reply.....X

Upon the foregoing papers, it is hereby ordered that Petitioners'

application for an Order staying arbitration is decided as follows:

Petitioner argues that Respondent was not involved in an automobile accident with an uninsured motor vehicle. Petitioner submits a Police Accident Report which indicates the Respondent was involved in a four-car accident and all four vehicles were insured on the date of accident. Two vehicles were purportedly insured by Autoone Insurance Company; the Respondent's vehicle was insured by National Ben Franklin Insurance Company of Illinois; and the last vehicle was insured by AIU Insurance Company.

In addition, Petitioner argues that it is entitled to discovery pursuant to its policy prior to any arbitration.

In opposition, Respondent argues that AIU Insurance Company, (insurer of the offending vehicle in a four-car pile up) had disclaimed coverage. In support of this contention, Respondent submitted a copy of a letter from the Robert Plan Corporation claiming a policy had not been renewed beyond March 1, 2004.

The Court notes that this letter does not identify the AIU policy referenced by Petitioners'. The Respondent has not met her burden. (**Statewide Insurance Company v. Libecchi**, 104 A.D.2d 893).

The Court joins AIU Insurance Company, and Jordan Kuncker Dolin as Additional Respondents'. The Petitioners' application to stay arbitration is granted pending determination of a hearing on the issue of whether AIU insured the offending vehicle on the date of accident.

All sides are directed to exchange proof of disclaimer/coverage at least ten days in advance of the hearing.

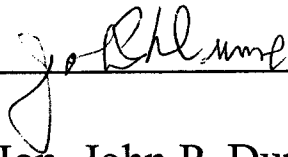
The Petitioner is directed to serve a copy of this Order, and the papers upon which it was based, on the additional Respondents'.

Petitioners' reserve their right to discovery, if not already provided, pursuant to the policy.

Petitioner is directed to file a note of issue and a copy of this Order upon the Clerk of Calendar Control Part who will schedule a hearing before a Court Attorney Referee, Judicial Hearing Officer or Justice of the Supreme Court. Petitioner is to file same within 90 days of this decision.

It is so ordered.

Dated: February 22, 2005

  
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Hon. John P. Dunne

**ENTERED**

**FEB 28 2005**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**