

SCAW

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. ROY S. MAHON

Justice

EAGLE INSURANCE COMPANY,

Plaintiff(s),

-against-

GOVERNMENT EMPLOYEES INSURANCE COMPANY,  
ROBIN H. LISSAK, VYACHESLAV LETSER, KINGS  
VALET PARKING, INC. and NOEL ORTIZ,

Defendant(s).

TRIAL/IAS PART 20

INDEX NO. 16337/00

MOTION SEQUENCE  
NO. 2 & 3

MOTION SUBMISSION  
DATE: March 4, 2002

Action No. 1

EAGLE INSURANCE COMPANY,

Plaintiff(s),

-against-

GOVERNMENT EMPLOYEES INSURANCE COMPANY,  
ROBIN H. LISSAK, VYACHESLAV LETSER, KINGS VALET  
PARKING, INC., EMBERS RESTAURANT, INC. and DAVID  
VILLARREAL,

Defendant(s).

INDEX NO. 998/01

Action No. 2

The following papers read on this motion:

Notice of Motion	X
Notice of Cross-motion	X
Affirmation	X
Reply Affirmation	X
Affirmation in Opposition	X

Upon the foregoing papers, the motion by the plaintiff in Action No. 1 and Action No. 2 for an

Order pursuant to CPLR 3212, granting Eagle summary judgment declaring that Eagle is not obligated to defend and indemnify Kings Valet Service, Inc., Vyacheslav Letser and Robin Lissak in the underlying Supreme Court, Kings County actions Ortiz v Lissak et al. and Villarreal v Kings Valet Parking, Inc., et al., and declaring that GEICO is obligated to defend and indemnify Robin Lissak and Vyacheslav Letser in said actions and the cross-motion by the defendants in Action No. 1 and Action No. 2 Government Employees Insurance Company (hereinafter referred to as "GEICO") and Robin H. Lissak for an Order pursuant to CPLR §3001 and §3212, granting summary judgment to defendants, Government Employees Insurance Company and Robin Lissak and declaring that the plaintiff herein is obligated to defend and indemnify its assureds Kings Valet Parking Inc. and its employee Vyacheslav Letser in the underlying actions pending in Supreme Court, Kings County, and for a further Order declaring that Government Employees Insurance Company is not obligated to defend or indemnify any parties other than its assured, Robin Lissak, are both determined as hereinafter provided:

On December 6, 1999 the defendant in Actions No. 1 and 2, Robin Lissak gave permission to the defendant in Actions No. 1 and 2, Vyacheslav Letser, an employee of the defendant in Actions No. 1 and 2, King Valet Parking, Inc., to operate her car for the purpose of parking the vehicle. The defendant Letser allegedly struck two pedestrians who subsequently commenced litigation against the defendants Lissak, Letser, King Valet and the business that utilized the valet parking service, Embers Restaurant, inc., a named defendant in the instant actions.

The plaintiff herein had at the time of the incident at issue an insurance policy in effect with an insured, the defendant Kings Valet Parking, Inc. The defendant GEICO had issued a policy of insurance to the defendant Robin Lissak.

In pertinent part, the policy of insurance issued to the defendant Kings Valet Parking by the plaintiff provides:

"A. LOSS CONDITIONS

2. DUTIES IN THE EVENT OF ACCIDENT, CLAIM SUIT OR LOSS

A. In the event of "accident", "claim", "suit" or "loss", you must give us or our authorized representatives prompt notice of the "accident" or "loss". Include:

- (1) How, when and where the "accident" or "loss" occurred;
- (2) the "insured's" name and address; and
- (3) to the extent possible, the names and addresses of any injured persons and witnesses.

B. Additionally, you and any other involved "insured" must: . . .

- (2) Immediately send us copies of any demand, notice, summons or legal paper received concerning the claim or "suit"
- (3) Cooperate with us in the investigation, settlement or defense of the claim or "suit."

A review of the respective submissions establishes that the plaintiff was not notified of the accident in question of December 6, 1999 until the defendant GEICO reported same to the plaintiff on or about July

28, 2000. The Court further notes that there is no indication that the plaintiff's insured provided any notice to the plaintiff. The Court does not find that the approximately eight month delay in notification constitutes prompt notice pursuant to the provisions of the policy. As such, that portion of the plaintiff's application which seeks an Order pursuant to CPLR 3212, granting Eagle summary judgment declaring that Eagle is not obligated to defend and indemnify Kings Valet Service, Inc., Vyacheslav Letser and Robin Lissak in the underlying Supreme Court, Kings County actions Ortiz v Lissak et al. and Villarreal v Kings Valet Parking, Cin., et al., is **granted**. (see, Allcity Insurance Company v Jimenez, 78 NY2d 1054, 576 NYS2d 87, 581 NE2d 1342) That branch of the defendants GEICO and Lissak's motion which seeks an Order pursuant to CPLR §3001 and §3212, granting summary judgment to defendants, Government Employees Insurance Company and Robin Lissak and declaring that the plaintiff herein is obligated to defend and indemnify its assureds Kings Valet Parking Inc. and its employee Vyacheslav Letser in the underlying actions pending in Supreme Court, Kings County is **denied**.

A review of the respective submissions establishes that the defendant Lissak turned her car over to the valet parking attendant, the defendant Letser (see, Vehicle and Traffic Law §388, also see, Carter v Travelers Insurance Company, 113 AD2d 178, 495 NYS2d 168 (First Dept., 1985)). There is no dispute that the defendant Lissak provided the defendant GEICO with prompt notification of the accident in issue. As such that portion of the plaintiff's motion which seeks an Order declaring that GEICO is obligated to defend and indemnify Robin Lissak and Vyacheslav Letser in said actions is **granted**. That branch of the defendants GEICO and Lissak's application which seeks a further Order declaring that Government Employees Insurance Company is not obligated to defend or indemnify any parties other than its assured, Robin Lissak, is **denied**.

DATED: 5/9/2002

Reps. Mahan  
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J.S.C.

