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SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. EDWARD W. MC CARTY, III
Justice

TRIAL/IAS, PART 3
NASSAU COUNTY

TRAVELERS INDEMNITY COMPANY

Petitioner(s)

INDEX No.5027/02

-against-

ARKADE KREMENCHUKER, LILIYA
ALISHAYEVA,

Respondent(s)

MOTION DATE:5/4/04
MOTION SEQ.#005

-and-

YANA KHANIMOV and SAFEWAY INSURANCE
COMPANY

Proposed Additional Respondent(s)

The following papers read on this motion:

Notice of Motion/Order to Show Cause	X
Cross-Motion	
Answering Affidavit	X
Replying Affidavits	X

Motion by additional respondent Safeway Insurance Company for an order (CPLR §3211[a][8]) dismissing the petition against it for lack of jurisdiction is granted.

Safeway was added to this petition to stay an "uninsured motorist" arbitration as the purposed insurer of the offending vehicle. They are a necessary party within the meaning of CPLR §1001[a] without whom complete relief cannot be afforded. By the present motion they challenge jurisdiction based upon the fact that they are a Georgia Corporation that has no contact with the State of New York (see *Aff of Pam Pedrero dt'd 11/23/03*). Travelers has submitted nothing that would refute or raise an issue of fact with respect to Safeway's claims and the motion must be granted.

At the present time the arbitration has been temporarily stayed pending a "framed issue" hearing on coverage. Without Safeway that hearing cannot go forward. Under the circumstances I will stay the demanded arbitration for a period of 60 days within which to permit Travelers Indemnity to institute an action for declaratory judgment in a forum where Safeway is subject to jurisdiction. In the event such action is instituted the stay shall

continue until a determination of sued action. In the event respondents Kremenchuker and Alishayeva refuse to consent to the jurisdiction in the declaratory judgment action the arbitration shall be stayed pending the furnishing of such consent.

In the event Travelers fails to institute an action, the parties are directed to proceed to arbitration.

Date 7-1-04

EDWARD W. McCARTY III

J.S.C.

ENTERED

JUL 08 2004

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**