

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK - NASSAU COUNTY

Present:

HON. ANTHONY L. PARGA

Justice

-----X PART 9

In the matter of the Application for a stay of
Arbitration of AUTOONE INSURANCE COMPANY,

Petitioner,

INDEX NO. 9163/10

-against-

JOSE HERNANDEZ,

Respondent,

-and-

JOSE BENITES and AMERICAN INDEPENDENT
INSURANCE COMPANY,

Prosed Additional Respondents.

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Notice of Motion, Affs. & Exs.....	<u>X</u>
Notice of Cross Motion, Affs. & Exs.....	<u>X</u>
Affirmation In Opposition & Exs.....	<u>X</u>
Reply Affirmation & Exs.....	<u>X</u>

The application by Autoone Insurance Company in this special proceeding for an order pursuant to CPLR 7503 to permanently stay respondent's application to proceed to arbitration is granted to the extent that a hearing shall be held on the issue of whether the car operated by Joseph R. Benites was insured by American Independent Insurance Company on May 3, 2009.

Respondent Jose Hernandez was a passenger in Luis Torres' car in a two-car accident at the intersection of Nassau Road and Roosevelt Boulevard, on May 3, 2009. Respondent Jose Hernandez, a passenger, seeks to go to arbitration on a claim for uninsured motorist benefits

under the his policy with Petitioner. Respondent seeks arbitration as a result of the assertion by Benite's carrier, American Independent Insurance company that claims for this accident might be denied.

This application is opposed by American Insurance Company for lack of personal jurisdiction. They argue that their insured's Jose R. Benites driving in New York does not satisfy the "requirement of contact with or purposeful availment of New York law and therefore a corporation not licensed or doing business in New York is not subject to personal jurisdiction."

Respondent Jose Hernandez opposes this application by arguing that American Independent Insurance Company has erroneously noticed all parties that their coverage of Jose R. Benites is uncertain and that all policies involved in these claims have been exhausted.

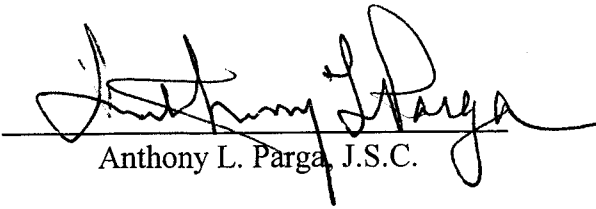
Jose R. Bentes and American Independent Insurance Company shall immediately be added as party respondents to this special proceeding in order that a full and complete determination of the rights and status of the parties may be made.

Petitioner shall serve a copy of this order and the papers upon which the application was based upon said additional respondents within 20 days of the date of this order.

The petitioner shall file a Note of Issue within 30 days of the date of this order and serve a copy of this order on the Clerk of the Calendar Control Part ("CCP") who shall place this matter on the CCP non-jury Hearing Calendar of October 6, 2010, at 9:30 A. M. A copy of this order shall also be served on the respondent and the proposed additional respondents. The directive with respect to a hearing is subject to the right of the Justice presiding in CCP II to refer the matter to a Justice, Judicial Hearing Officer or a Court Attorney/Referee as he or she may

deem appropriate. Failure to file the Note of Issue shall result in dismissal of the proceeding.

Dated: September 2, 2010


Anthony L. Parga, J.S.C.

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