

**SUPREME COURT - STATE OF NEW YORK**

ENTERED  
IN  
CLERK'S  
OFFICE

PRESENT: HON. PETER B. SKELOS,  
Justice.

---

In the Matter of the Application of  
LIBERTY MUTUAL INSURANCE COMPANY,

TRIAL/IAS PART 24  
NASSAU COUNTY

Petitioner,

MOTION # 01  
INDEX # 617/03  
MOTION SUBMITTED:  
FEBRUARY 19, 2003

-against-

JAMILA SIMMONS,

Respondent,

-and-

EMPIRE INSURANCE COMPANY and  
HANS D. GERLUS,

Proposed Additional Respondents.

---

The following papers read on this motion:

- Notice of Motion/Order to Show Cause.....1
- Cross Motion/Answering Affidavits.....2,3
- Reply Affidavits.....4

Motion by petitioner for an order pursuant to CPLR 7503(c) permanently staying the uninsured motorist arbitration demanded by the respondent and for alternative and other relief is denied in all respects.

This proceeding arises out of a motor vehicle – pedestrian accident, which allegedly occurred on November 8, 2001 on Sycamore Avenue at its intersection with Peninsula Boulevard in Hempstead, New York. The motor vehicle, owned by Hans D. Gerlus and

operated by Voncilla L. Holiday, apparently struck the respondent while making a left turn from Peninsula Boulevard onto Sycamore Avenue. By demand dated December 27, 2002, the respondent seeks uninsured motorist arbitration under the automobile insurance policy issued to Jessie and William Simmons by the petitioner, which policy was concededly in effect on the date of the accident.

The petitioner moves for a permanent stay of arbitration on the grounds that the vehicle which struck the respondent was insured on the date of the accident. As proof, the petitioner has annexed a copy of the Police Accident Report (Petitioner's Exhibit C), which lists an insurance company code (i.e., 107) for the Gerlus vehicle, which code identifies Empire Insurance Company as the insurer. A Police Accident Report containing an insurance company code is prima facie proof of the existence of insurance coverage (*see Gov't Empl. Ins. Co. v McFarland*, 286 AD2d 500; *State Farm Mut. Auto Ins. Co. v Youngblood*, 270 AD2d 493).

In opposition, the respondent has submitted a copy of a letter, dated March 4, 2002, from Antonio Robertson, who identifies himself as a Claims Adjuster for GAB Robins North America, Inc., to Hans Gerlus. Mr. Robertson writes that "after a thorough search in our records, we are unable to locate any policy for you with Empire Insurance Company (Allcity/Centurion)." Additionally, Empire Insurance Company has provided a copy of a letter, dated February 18, 2003, from Monica Pinnock under the "Empire Insurance Group" letterhead "To Whom It May Concern." Ms. Pinnock writes: "Our research indicates on the above date of loss, our company did not provide insurance for the above named insured [i.e., Hans D.

Gerlus].” Ms. Pinnock further writes that: “Attached please find copy of search that was done by vehicle identification number, name and address.”

Since the petitioner has failed to offer any evidence to rebut the evidence submitted by Empire Insurance Company and the respondent showing that there was no insurance coverage, that branch of the petitioner’s motion seeking a permanent or temporary stay of arbitration on this ground is denied (*see, e.g., State Farm Mut. Auto Ins. Co. v Youngblood, supra*, p. 494; *Prudential Property & Casualty Ins. Co. v Mortise*, 178 AD2d 646-647; *State-Wide Ins. Co. v Valdes*, 173 AD2d 624, 625). For the same reasons, that branch of the petitioner’s motion seeking an order adding Empire Insurance Company and Hans D. Gerlus as additional respondents is denied.

Alternatively, the petitioner seeks a temporary stay of arbitration on the grounds that “the Respondents/claimants have failed to satisfy numerous other conditions precedent to initiation of arbitration proceedings.” These other conditions include written proof of claim, examination under oath, physical examinations, etc. In response counsel for the respondent states that: “Respondent filed with petitioner a duly executed Notice of Claim in triplicate along with a completed no-fault application and copy of police report on November 19, 2001 *approximately 14 months ago.*”

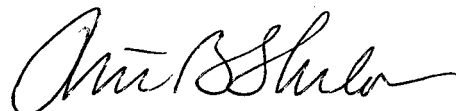
Counsel furthermore states: “It should be noted that the petitioner, Liberty Mutual, has accepted responsibility as the no-fault carrier in this matter and in such capacity, has requested and conducted three IMEs of the respondent by Dr. Sol S. Farkas, M.D. (orthopedic) on July

24, 2002, Dr. Jeffrey Perry, (D.O.) On March 22, 2002 and Dr. Scott Cortez, (L.Ac.) On March 26, 2001.” Counsel additionally states: “With regard to petitioner’s assertion that they have not received any medical reports or authorizations, attached as Exhibit ‘3’ is a copy of this office’s letter dated October 10, 2002 forwarding extensive medical documentation to Liberty Mutual as well as authorizations for the MRI films and a copy of the no-fault file.”

The Court holds that the petitioner has had ample time prior to making this application to seek additional discovery from the respondent and has unjustifiably failed to do so. Consequently, the petitioner will not be granted a temporary stay of arbitration for this purpose (*see Allstate Ins. Co. v Miles*, 280 AD2d 472; *Liberty Mut. Ins. Co. v Almeida*, 266 AD2d 547; *Allstate Ins. Co. v Faulk*, 250 AD2d 674). Insofar as the petitioner seeks an order directing the respondent to comply with the discovery demands set forth in the petition, this branch of the petitioner’s motion is denied as well. This request is untimely. Moreover, the petitioner has not explained in what respects the discovery it has already received is inadequate.

Accordingly, the arbitration may proceed.

Dated: May 8, 2003



PETER B. SKELOS, J.S.C.

**ENTERED**

**MAY 13 2003**

**NASSAU COUNTY  
COUNTY CLERK'S OFFICE**