

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

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IN THE MATTER OF THE APPLICATION FOR AN
ORDER STAYING ARBITRATION BETWEEN
FARMINGTON CASUALTY COMPANY,

Petitioner,

-and-

CHRISTINA A. CARDILLO BY ANNE ELIZABETH
TIFFENWORTH AS PROPOSED ADMINISTRATOR
OF THE ESTATE OF CHRISTINA A. CARDILLO
Respondent.

**Michele M. Woodard
J.S.C.
TRIAL/IAS Part 18
Index No.: 19670/06**

DECISION & ORDER

Motion Seq. No.: 01

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Papers Read on these Motions:

Farmington Casualty Company's Notice of Petition	01
Tiffenworth's Opposition	xx
Farmington Casualty Company's Reply	xx

Petitioner Farmington Casualty Company moves for an Order pursuant to CPLR § 7503(b) permanently staying the uninsured motorist arbitration in this matter or in the alternative staying the arbitration pending the result of a Framed Issue Hearing on the issue of "physical contact" in the motor vehicle accident which precipitated this matter.

This case is before the Court as a result of a motor vehicle accident which occurred on November 6, 2003. Farmington Casualty Company issued a policy to Anne Tiffenworth which covered the car involved in the accident. Decedent Christina A. Cardillo was the driver of the car with the consent of Anne Tiffenworth. The Respondent claims that Cardillo's vehicle was hit in the rear by an unknown vehicle which left the scene. Respondent claims that as a result of the hit the Decedent lost control of her vehicle and ran into a tree. Cardillo sustained serous injuries as a result of the accident and died as a result. The Respondent is seeking No Fault benefits pursuant to the "hit and run" provisions of her automobile policy with the Petitioner.

The Petitioner alleges that the Respondent has failed to establish that there was any physical contact involved in the motor vehicle accident. The Respondent opposes the Motion. The Respondent claims that the police report and photographs from the scene of the accident establish that there was "physical contact" involved in the motor vehicle accident. The Respondent has also submitted the affidavit of Davina Furney who claims that she was talking on the cell phone with Cardillo when the accident occurred. Furney claims that at some point in their conversation Cardillo exclaimed: "Oh my God! The headlights are coming at me." The Court cannot establish whether there was "physical contact" from the papers before it a requires a hearing.

The Petitioner's application is **Granted** to the extent that it is hereby

ORDERED, that the arbitration in this matter is temporarily **STAYED** to allow for a hearing on the issue of physical contact. It is further

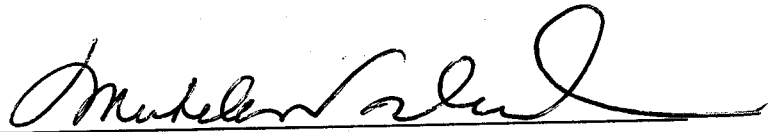
ORDERED, that this matter is referred to the Calendar Control Part (CCP for a hearing on the issue of physical contact to be held on December 20, 2007 at 9:30 a.m. Plaintiff shall file and serve a Note of Issue, together with a copy of this Order, on all parties and shall serve copies of same, together with receipt of payment, upon the Calendar Clerk of this Court within twenty (20) days of the date of this Order.

The failure to file a Note of Issue or appear as directed may be deemed an abandonment of the claims giving rise to the hearing. 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 deems appropriate.

This constitutes the **DECISION** and **ORDER** of the Court.

DATED: November 26, 2007
Mineola, N.Y.

ENTER :



HON. MICHELE M. WOODARD
J.S.C.

ENTERED

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NAS COUNTY JUDGE