

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOHN W. BURKE

Justice

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In the Matter of the Application for an
Order Staying Arbitration Between
ALLSTATE INSURANCE COMPANY,

TRIAL/I.A.S. PART 3
NASSAU COUNTY

Petitioner,

INDEX NO. 3031/99

-against-

MOSES TORRES, as Administrator of the
Estate of LUIS TORRES, JR., deceased,
and MOSES TORRES, individually,

MOTION DATE: 5/5/00
MOTION NO. 002

Respondent,

-and-

AMERICAN HOME ASSURANCE COMPANY and
ELECTRIC INSURANCE COMPANY,

Additional Respondents.

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Notice of Motion, Affs. & Exs.....	<u>1</u>
Answering Affidavits.....	<u>2 - 3</u>
Replying Affidavits.....	<u>4</u>
Briefs: Plaintiff's/Petitioner's.....	_____
Defendant's/Respondent's.....	_____

Upon the foregoing papers, it is ordered that this application by petitioner pursuant to CPLR §7503 to stay arbitration of an uninsured/underinsured motorist claim is disposed of as hereinafter provided.

On January 1, 1998 a vehicle owned by Joselito Solis struck Luis Torres, Jr., a pedestrian. Mr. Torres died immediately after the accident. The Police Report indicates that, in addition to multiple injuries sustained as a result of the accident, Mr. Torres also had an apparent gunshot wound to the head. The Police Report also indicates that the driver of the Solis vehicle left the scene of the accident. Rafael Zorilla is named as the operator of the vehicle in the Notice of Intention to Make Claim. Finally, the Police Report gives the decedent's address as 890 East 6th Street, Apt. 8D, New York, NY 10009 and lists the insurance code for the Solis vehicle as 027 (American Home Assurance Company). The Notice of Intention to Make Claim states that the decedent's address was 691 F.D.R. Drive, Apt. 121 (or 12I), New York, NY 10009. This last address is the address given for Moses Torres, the Administrator of

the Estate of the decedent, Luis Torres, Jr. Moses Torres owned a vehicle which was insured by petitioner Allstate Insurance Company and the basis for the claim is that the decedent was a member of the household of Moses Torres.

The Motor Vehicle Registration Record submitted by petitioner indicates that the Solis vehicle was insured by Electric Insurance Co. and by American Home Assurance Co. Cancellation dates are shown for both carriers but commencement dates for the policies are not shown.

Apart from the substantive questions of the existence and/or the efficacy of insurance coverage and the question of whether the decedent and the Administrator of his estate, Moses Torres, resided in the same household, there are procedural questions to be resolved.

Petitioner claims that it was never properly served with a Demand for Arbitration and that the statutory 20-day period within which to commence a proceeding to stay arbitration never commenced to run. Proposed additional respondent Electric Insurance Company contends that it should not be added as a respondent because the petition did not seek its addition as a party. Electric Insurance Company also requests that, if it is added as a respondent, the producer of the policy, Bernardo Rivera, 1195-1197 East Tremont Avenue, Bronx, NY 10460 be added as a respondent because it is the belief of Electric that the person who registered and insured the Solis vehicle did so with stolen or fraudulent identification. Electric also seeks to have the operator of the Solis vehicle, Rafael Zorilla, added as a respondent.

Since virtually all of the facts alleged by the parties appearing herein must be resolved by a hearing, American Home Assurance Company, Electric Insurance Company, Joselito Solis, Bernardo Rivera and Rafael Zorilla are added as additional respondents.

This application is adjourned pending the preparation, filing and service of a Petition amended to include the additional parties and s Supplemental Notice of Petition. Said papers shall be served upon the parties who appeared herein by regular mail addressed to the parties or to their attorneys and shall be served upon all additional respondents according to law and upon the attorneys for Moses Torres, individually and as Administrator of the Estate of Luis Torres, Jr.

Petitioner shall serve a copy of this order on all parties appearing on this application and upon the American Arbitration Association within 10 days of the date hereof.

Dated: AUG 01 2000


J. S. C.