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SHORT FORM ORDER

**SUPREME COURT - STATE OF NEW YORK
COUNTY OF NASSAU - PART 15**

**Present: HON. WILLIAM R. LaMARCA
Justice**

**In the matter of the Application of the
PROGRESSIVE NORTHEASTERN INSURANCE
COMPANY,**

**Motion Sequence #1
Submitted May 1, 2009**

Petitioner,

-against-

INDEX NO: 2137/09

**To Stay the Arbitration sought to be had by
NING YI CHUEH,**

Respondent,

-and-

**DESIREE ANTHONY and QBE INSURANCE
CORPORATION c/o COUNTRYWIDE MANAGEMENT
SERVICES,**

Proposed Additional Respondents.

The following papers were read on this petition:

**Notice of Petition and Petition.....1
QBE Affirmation in Opposition.....2
Reply Affirmation.....3**

**Petitioner, PROGRESSIVE NORTHEASTERN INSURANCE COMPANY
(hereinafter referred to as "PROGRESSIVE"), moves for an order, pursuant to CPLR**

Article 75, staying arbitration of an alleged uninsured vehicle claim and adding the proposed additional respondents, DESIREE ANTHONY, QBE INSURANCE CORPORATION (hereinafter referred to as "QBE") c/o COUNTRYWIDE MANAGEMENT SERVICES (hereinafter referred to as "COUNTRYWIDE"). Proposed respondent, QBE, opposes the petition, which is determined as follows:

Respondent, NING YI CHUEH, has served a Notice of Intention to make an uninsured motorist claim as a result of an accident, on March 7, 2007, with a vehicle driven and owned by DESIREE ANTHONY, which occurred on the lower level of the Queensboro Bridge. Moving counsel states that, per the Registration Record Expansion, the ANTHONY vehicle is insured by QBE, and that arbitration should be stayed and a framed issued hearing be held to determine coverage. Additionally, moving counsel requests that, should respondent be entitled to uninsured motorist benefits, that she be compelled to comply with discovery requests prior to arbitration.

In opposition to the petition, counsel for QBE annexes copies of cancellation documents sent to DESIREE Anthony which allegedly show that QBE'S cancellation was effected on February 28, 2007, prior to the accident. Counsel urges that the petition to add QBE as a proposed additional respondent be denied. The Court notes that the cancellation document was allegedly mailed on March 19, 2007, after the accident occurred.

In reply, PROGRESSIVE asserts that there is a technical defect with respect to the correct carrier as it appears that COUNTRY WIDE INSURANCE COMPANY, with its own Insurance Code, was asked to cancel the policy and not QBE. Counsel argues that a request to COUNTRYWIDE is not sufficient to initiate the premium finance cancel

procedures of Banking Law §576 and that cancellation of the policy was defective.

After a careful reading of the submissions herein, it is the judgment of the Court that a hearing is required on the issue of whether there is a right to proceed to arbitration and whether there is insurance coverage for the ANTHONY automobile with QBE , or any other company, or if said proposed respondent complied with applicable cancellation requirements. Accordingly, it is hereby

ORDERED, that PROGRESSIVE's petition for a stay of the demanded arbitration is granted pending resolution of the issues raised herein and DESIREE ANTHONY, QBE and COUNTRYWIDE are added as additional respondents; and it is further

ORDERED, that subject to the discretion of the Justice there presiding, this matter shall appear on the calendar of Calendar Control Part on November 19, 2009 at 9:30 A.M., for assignment to a framed issue hearing. All carriers claimed to have provided offending vehicle coverage and their insureds are hereby added as necessary parties (see CPLR §1001) provided petitioner obtains jurisdiction over such parties by service of a copy of this order and all of the papers upon which it is based, pursuant to CPLR Article 3, within twenty (20) days after entry; and it is further

ORDERED, that there shall be a response to the petition by the added respondents no later than twenty (20) days after jurisdiction has been obtained. The response by purported insurers shall include copies of all documentation and affidavits relied upon in support of any claim of non-coverage; and it is further

ORDERED, that petitioner shall serve and file a Note of Issue no later than sixty (60) days after entry of this order. A copy of this order shall accompany the Note of Issue when

filed, together with proof that a copy of the order has been mailed to all parties to the original petition within fifteen (15) days after entry. A copy of this order shall be served on the Clerk of the Calendar Control Part within twenty (20) days after entry. Failure to timely file a Note of Issue will be deemed an abandonment of the claims raised herein; and it is further

ORDERED, that should respondent be found to have the right to proceed to arbitration, appropriate discovery shall proceed prior to the arbitration hearing.

All further requested relief not specifically granted is denied.

This constitutes the decision and order of the Court.

Dated: August 27, 2009


WILLIAM P. LaMARGA, J.S.C.

ENTERED

AUG 31 2009

**NASSAU COUNTY
COUNTY CLERK'S OFFICE**

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