

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

-----X Index No.: 23611/2017E

In the Matter of the Application of the  
GOVERNMENT EMPLOYEES INSURANCE  
COMPANY,

**ORDER WITH NOTICE  
OF ENTRY**

Petitioner,

-against-

SHARNETT WILLIAMS,

Respondent.

-----X

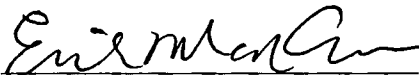
C O U N S E L O R S :

PLEASE TAKE NOTICE that the within is a true copy of an Order duly entered in the office of the clerk of the Supreme Court, Bronx County on March 23, 2018.

Dated: Staten Island, New York  
April 3, 2018

Yours, etc.,

CONNORS & CONNORS, P.C.

By: 

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TO: LAW OFFICE OF RYAN S. GOLDSTEIN, PLLC  
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX  
PART 8**

Index No.: 23611/2017E  
Motion Calendar No.: 7  
Motion Return Date: 08/14/17

In the Matter of the Application of the  
GOVERNMENT EMPLOYEES INSURANCE  
COMPANY

Petitioner,

SHARNETT WILLIAMS,

DECISION/ ORDER

Present:

Hon. Donald A. Miles  
Justice Supreme Court

Respondent,

Recitation, as required by Rule 2219(a) of the C.P.L.R., of the papers considered in the review of this notice of petition to stay arbitration:

| <b>Papers</b>  | <b>Numbered</b> |
|--|-----------------|
| <b>Notice of Petition and Exhibits Annexed .....</b> | <b>1</b>        |
| <b>Affirmation in Opposition .....</b>               | <b>2</b>        |
| <b>Reply Affirmation.....</b>                        | <b>3</b>        |

Petitioner moves for an order, pursuant to CPLR §7503(c), permanently staying the arbitration initiated by respondent, or in the alternative, a temporary stay of arbitration until such time as petitioner has had an opportunity to conduct discovery permitted pursuant to the insurance contract. For the reasons set forth below, the petition is granted to the following extent:

The respondent Sharnett Williams, the petitioner’s insured, was allegedly injured on June 12, 2014, as a result of an accident which occurred on the Sprain Brook Parkway North, near Jackson Avenue, Town of Greenburg in Westchester County, New York. In reporting the accident to petitioner, the respondent stated that she swerved to avoid another vehicle and struck the guardrail. The respondent demanded arbitration against petitioner Government Employees Insurance Company (hereinafter referred to as “GEICO”) for benefits under the uninsured motorists coverage afforded by the GEICO policy. GEICO now seeks a permanent stay of arbitration, asserting that the respondent did not make contact with the offending vehicle, a condition precedent to arbitration. Petitioner further contends that respondent did not provide any details regarding the accident or the respondent’s alleged injuries, and as such has not complied

with the requirements for a valid demand for arbitration. Alternatively, GEICO seeks a temporary stay, pending completion of discovery.

It is well settled that in a proceeding in which an insurer is seeking a stay of uninsured motorist arbitration, the petitioning insurer “bears the initial burden of proving that the offending vehicle was in fact insured at the time of the accident.” *Matter of Eagle Insurance Company v. Tichman*, 185 A.D.2d 884, 885 (2<sup>nd</sup> Dept. 1992). In other words the petitioning insurer must establish a *prima facie* case of coverage for the adverse or offending vehicle.

In support of its application, the petitioner submits a copy of the respondent’s request for uninsured motorist arbitration, dated April 10, 2017 and which appears to be prepared and is signed by respondent’s counsel. Petitioner maintains that the respondent in reporting the accident to petitioner, stated that she swerved to avoid another vehicle and struck the guardrail and that she did not make contact with the allegedly uninsured vehicle. The respondent has opposed the application for a permanent stay of arbitration and submits a copy of the police accident report, contending that the matter should be stayed temporarily to allow for completion of discovery.

In its reply papers, Petitioner points to the respondent counsel’s affirmation in opposition in maintaining that Respondent has admitted that her vehicle had no contact whatsoever with the alleged uninsured vehicle. Petitioner also argues that respondent has not refuted or even addressed her failure to provide information as to any alleged injuries or the precise circumstances surrounding the underlying accident.

Physical contact between the insured vehicle and an unidentified, uninsured or under insured vehicle is a condition precedent to arbitration under an insurance policy’s uninsured motorist endorsement ( See, Insurance Law § 5217). The burden is on the respondent to show, at least *prima facie*, that actual physical contact occurred. The insured has the burden of establishing that the loss sustained was caused by an uninsured vehicle, namely that physical contact occurred, that the identity of the owner and operator of the offending vehicle could not be ascertained, and that the insured’s efforts to ascertain such identity were reasonable. (*Nova Cas. Co. v. Musco*, 48 A.D. 3d 572 [2<sup>nd</sup> Dept. 2008]).

Petitioner has failed to establish by admissible evidence a *prima facie* case for a permanent stay of arbitration. While Petitioner points out the deficiencies of respondent’s

demand for arbitration, particularly, the lack of any sworn affidavit or statement by respondent herself, surrounding the circumstances of the accident, petitioner somehow maintains that respondent admits that there was absolutely no physical contact with the alleged offending vehicle. At the very least, a framed issue hearing should be conducted on this issue. Accordingly, it is hereby

ORDERED that petitioner's application to the extent it seeks to permanently stay respondent's uninsured motorist proceeding, is denied; and it is further

ORDERED that the subject arbitration is temporarily stayed for ninety (90) days, pending a framed issue hearing as to whether there was any physical contact between respondent's vehicle and the offending vehicle; and it is further

ORDERED, that the parties are directed to appear for a framed-issue hearing on Monday, May 14, 2018 at 11:00 a.m. in Room 706, Part 8 of the New York State Supreme Court, Bronx County in order to resolve the issue whether there was any physical contact between respondent's vehicle and the offending vehicle; and it is further

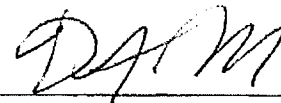
ORDERED that petitioner shall provide respondent Sharnett Williams with HIPAA compliant authorizations, within twenty (20) days of entry of this order, which respondent shall sign and return to petitioner, and submit to physical examination and an examination under oath within sixty (60) days thereafter; and it is further

ORDERED that petitioner shall serve a copy of this order with notice of entry upon respondent within twenty (20) days of entry of the order.

This constitutes the decision and order of the Court.

MAR 15 2018

DATE



HON. DONALD A. MILES, JSC.



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