

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JAIME A. RIOS
Justice

IA PART 8

UTICA MUTUAL INSURANCE COMPANY, X

Petitioner,

_____ - against -

LENOR MUNOZ, LUIS MUNOZ, STEVEN
URENA and MARIA GILL,

Respondents.

- and -

LORINDA S. HORN and NEW JERSEY
CITIZENS UNITED RECIPROCAL
EXCHANGE,

Proposed Add'l. Respondents.

X

The following papers numbered 1 to 13 were read on this motion by the respondent New Jersey Citizens United Reciprocal Exchange, pursuant to CPLR 404[a], 405[b], 406 and 3211, to dismiss the petition for lack of jurisdiction.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits	1- 4
Answering Affidavits - Exhibits	5-10
Reply Affidavits	11-13

Upon the foregoing papers it is ordered that the motion is determined as follows:

On or about January 14, 2003, there was an alleged accident between a vehicle owned and operated by the respondent Lenor Munoz (Munoz), and a vehicle owned and operated by Lorinda Horn s/h/a Lorinda Horn (Hom). At the time, the additional respondents Luis Munoz, Steven Urena and Maria Gill were passengers in the Munoz' vehicle (passengers).

By demand dated April 11, 2003, Munoz and the passengers sought arbitration of their uninsured motorist claims with Munoz' insurer, the petitioner Utica Mutual Insurance Company (Utica Mutual). Utica Mutual commenced this proceeding to stay the arbitration, contending that Hom's vehicle was insured by New Jersey Citizens United Reciprocal Exchange (NJ Cure).

By order dated August 13, 2003, this court (Hart, J.) granted Utica Mutual leave to add Hom and NJ Cure as additional respondents, and set the matter down for a hearing on the issue of whether coverage was available through NJ Cure, and all other issues raised in the petition and answering papers.

Based upon the affidavit by its bodily injury claims supervisor, NJ Cure moves to dismiss the petition for lack of jurisdiction, contending that: (1) it is a New Jersey corporation with its primary place of business in New Jersey; (2) it is not authorized to and does not conduct or transact any business in New York and, instead, it conducts and transacts business only in New Jersey; (3) it does not control and is not controlled by any insurer that transacts business in New York; (4) it does not have a broker selling policies to New York residents, and does not have an agent collecting premiums from New York residents; and, (5) it did not commit any tortious act or possess any property in New York.

Utica Mutual opposes the motion contending, inter alia, that: (1) the affidavit by NJ Cure's claims supervisor is insufficient to demonstrate that this court lacks personal jurisdiction over NJ Cure; (2) the police accident report indicated that Hom had a New York and New Jersey address, so NJ Cure knew that it was issuing a policy to a vehicle registered to a New York State resident; and, (3) in any event, a hearing is warranted on the issue of whether jurisdiction over NJ Cure exists. Lopez and the passengers also oppose the motion, contending that by insuring Hom, a New York resident, NJ Cure transacted business within this State.

NJ Cure replies, inter alia, that the police report relied upon by Utica Mutual clearly indicates that the Hom vehicle had a New Jersey plate and registration, and that Hom had only New Jersey addresses, one in Middletown, New Jersey and the other in Plainsboro, New Jersey. In further support, NJ Cure annexes Hom's application of or insurance indicating that she lived and worked in, and was licensed to drive by, the State of New Jersey.

In its motion papers, NJ Cure established that it is not licensed to do business in New York, that it lacks any office, agent or telephone in New York, that it does not solicit business

in New York, and that the exercise of personal jurisdiction over it would be improper (see CPLR 302[1][1]; Franklin v Catawba Ins. Co., 291 AD2d 371 [2002], lv denied, 98 NY2d 604 [2002]; Matter of N.Y. Cent. Mut. Ins. Co. v Johnson, 260 AD23d 638, 639 [1999]; see also Chase Manhattan Bank v AXA Reinsurance UK, PLC, 300 AD2d 16 [2002]). In response to the motion, Utica Mutual, Lopez and the passengers failed to raise any issue of fact. The police report clearly indicates that Hom's vehicle was licensed by and registered in New Jersey, that Hom lived in New Jersey, and that Hom was licensed to drive in New Jersey.

Furthermore, Hom's unilateral act of driving into New York does not satisfy the requirement that NJ Cure have contact with or purposefully avail itself of New York, such that it can be deemed to be transacting business under New York's long-arm statute (see CPLR 302[a][1]; Franklin v Catawba Ins. Co., supra; Matter of N.Y. Cent. Mut. Ins. Co. v Johnson, supra).

Accordingly, the motion by NJ Cure is granted, and the petition interposed against NJ Cure is dismissed.

Any remaining issues raised by the petition and answering papers shall be determined at the framed issue hearing which is scheduled for January 31, 2005.

Dated: December 6, 2004

J.S.C.