

Short Form Order and Judgment

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE JAIME A. RIOS IA PART 8
Justice

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AGWAY INSURANCE COMPANY (now known as
COUNTRYWAY INSURANCE COMPANY,

Index
Number: 26187/03

Petitioner,
- against -

Trial
Date: September 9, 2004

ABEL DELEON,

Respondent.
- and -

Trial
Cal. Number: 1

RELIANCE INSURANCE COMPANY and the
SUPERINTENDENT OF INSURANCE OF NY,

Add'l. Respondents.

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Upon the consent of the parties, this matter is submitted to the court upon a stipulation of facts, as contained in the petition and answering papers.

Background

Apparently on March 5, 1998, the respondent Abel De Leon (De Leon) was involved in an automobile accident with a taxi-cab owned by A. Pantelinis (Pantelinis). The police report prepared at the scene of the accident, indicates that the Pantelinis vehicle was insured by Reliance Insurance Company (Reliance) at that time. In 1999, De Leon commenced a personal injury action against Pantelinis in Queens County. While the action was pending Reliance on October 3, 2001 was placed in liquidation upon a determination of insolvency. On or about October 23, 2003, Petitioner Agway Insurance Company (Agway) received a demand for uninsured motorist (UM) arbitration on behalf of its insured, De Leon.

Contentions

Agway timely filed a petition to permanently stay the UM claim contending: 1) De Leon breached a condition precedent to UM coverage by failing to forward the legal papers demonstrating his initiation of legal proceedings against Pantelinis; and 2) the Pantelinis vehicle was insured by Reliance, and De Leon should pursue recovery through the New York Motor Vehicles Liability Security Fund. In response De Leon contends that

Agway's insurance policy does not make the forwarding of legal papers a condition precedent to coverage and the provision in the policy is ambiguous; and 2) as Reliance is in liquidation, the Pantlinis vehicle is uninsured.

Decision

In the recent case of Eagle v. Hamilton, 4 AD 3d 355 [2004], the Appellate Division has held that where an alleged tortfeasor's insurer has paid into the New York Public Motor Vehicle Liability Fund (PMV Fund) and has been declared insolvent after the underlying accident, the injured party's remedy is not against his own insurer for UM benefits, but rather against the PMV Fund. This court has joined the Superintendent of the New York State Insurance Department in this proceeding, however, they have failed to appear. Accordingly, Respondent's recourse is against the PMV Fund.

With respect to Agway's claim that De Leon was required to forward the pleadings from the tort action against Pantelinis to them as a condition precedent to a valid UM claim, the court has reviewed the policy. Part E of the policy is entitled "Duties after accident or loss". Contained in said provision is language which relieves Agway of an obligation to provide coverage unless there has been compliance with certain duties which includes a requirement that the insured: "promptly send us copies of the legal papers if a suit is brought." Here, there is no dispute that the summons and complaint were not forwarded to Agway, however, no where in the policy is there a definition of "legal papers". As stated in Federal Insurance Co v. Stechman, 192 AD 2d 531 (1993), the term *legal papers* "must be defined with sufficient clarity to avoid fatal ambiguity" accordingly, absent the holding in Eagle v. Hamilton (supra), the petition would have to be denied.

Based upon the foregoing, it is Ordered and Adjudged that the petition to stay UM arbitration is granted.

Dated: September 9, 2004

J.S.C.