

Matter of Travelers Indem. Co. v Machado
2006 NY Slip Op 02770
Decided on April 11, 2006
Appellate Division, Second Department
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Decided on April 11, 2006

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT HOWARD
MILLER, J.P. WILLIAM F. MASTRO STEVEN W. FISHER ROBERT J. LUNN,
JJ.

DECISION & ORDER

2005-07292

[*1]In the Matter of Travelers Indemnity Company, petitioner-respondent,

v

**Eduardo A. Machado, et al., respondents, Allstate New Jersey Insurance
Company, appellant, et al., proposed additional respondent. (Index No.
32619/04)**

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum] of counsel), for appellant.
Moore & Associates, New York, N.Y. (Michael L. Rappaport of counsel), for petitioner-respondent.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration of an uninsured motorist claim, Allstate New Jersey Insurance Company appeals from an order of the Supreme Court, Kings County (George, J.H.O.), dated June 23, 2005,

which, after a hearing, granted the petition.

ORDERED that the order is reversed, on the law, with costs, the petition is denied, the proceeding is dismissed, and the petitioner is directed to proceed to arbitration.

The petitioner commenced this proceeding to permanently stay arbitration of an uninsured motorist claim, arguing that the offending vehicle was covered by an automobile insurance liability policy issued by either the appellant or Metropolitan Property and Casualty Insurance Company. A framed-issue hearing was held at which the appellant presented the testimony of one of its underwriters who detailed the name, address, and vehicle searches she conducted to determine if the appellant insured the offending vehicle at the time of the accident. Computer printouts corroborating the search results were also admitted into evidence. [*2]

This evidence of an exhaustive search of the appellant's records disclosing that no policy of insurance was ever issued to the offending vehicle was sufficient to rebut the petitioner's prima facie showing of coverage (*see Matter of New York Cent. Mut. v Coriolan*, 5 AD3d 493; *Matter of American Tr. Ins. Co. [Glaude]*, 208 AD2d 376, 377; *Matter of Allstate Ins. Co. v Karadag*, 205 AD2d 531, 532; *Matter of Nationwide Ins. Co.[Dye]*, 170 AD2d 683). To the extent that the Appellate Division, First Department's decision in *Highlands Ins. Co. v Baez* (18 AD3d 238) can be read to hold that the appellant was required to attempt to locate the owner of the offending vehicle by telephone or letter or to compel her appearance at the hearing, we decline to follow it. It is properly the burden of the insurer for the claimant seeking uninsured motorist coverage, not the disclaiming insurance company, to produce this type of additional evidence of coverage once sufficient evidence, i.e., the "exhaustive search," is introduced to rebut the prima facie case (*see Matter of American Tr. Ins. Co. [Glaude]*, *supra* at 377; *Matter of State Wide Ins. Co. v Libecci*, 104 AD2d 893; *Matter of New York Cent. Mut. v Coriolan*, *supra*). Since the petitioner did not submit any additional proof of insurance coverage following the appellant's rebuttal of its prima facie case, the hearing court improperly granted the petition to stay arbitration

(see *Matter of Allstate Ins. Co. v Karadag, supra*; *Matter of New York Cent. Mut. v Coriolan, supra*). MILLER, J.P., MASTRO, FISHER and LUNN, JJ., concur.

ENTER:

James Edward Pelzer

Clerk of the Court