SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

**Present: HON. THOMAS A. ADAMS**
**Justice**

**TRIAL/IAS PART 8**

**Uninsured Part**

In the Matter of the Application of
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Petitioner(s),

-against-

**Index # 00-014759**
**Seq. #1**

To Stay the Uninsured Motorist Arbitration of
ANDRE CRAWFORD, et al.,

Respondent(s).

---

The following papers having been read on this motion:

Notice of Motion, Affidavits & Exhibits . . . . . . . . . . . . . . ______
Answering Affidavits . . . . . . . . . . . . . . . . . . . . . . . . . . . . . ______
Replying Affidavits . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . ______
Briefs: Plaintiff's/Petitioner's . . . . . . . . . . . . . . . . . . . . . . ______
Defendant's/Respondent's. . . . . . . . . . . . . . . . . . . ______

Application for an order (CLR 7503 [c]) staying an "uninsured motorist" arbitration is disposed of as indicated.

This determination and the 200 similar simultaneous dispositions involving petitions submitted between December 12, 2000 and January 31, 2001 must be placed in perspective. In July of 1999 the volume of petitions to stay uninsured motorist arbitrations in this court became such that the Administrative Judge was required to establish the "uninsured part" over which this court presides. In those 17 months more than 2,400 of such petitions have been assigned. Operation of the part requires that submitted motion calendars be held 2 days a week. The number of motions on such calendars regularly exceeds 35. Motion conference calendars of 20 to 25 cases are held 2 days a week. Trial Assignment conferences are held on Wednesdays and Friday of each week. Trials utilizing the services of court attorney referees and Judicial Hearing Officers are held 4 days a week. As might be expected, the demands on the judicial, quasi-judicial, support and clerical personnel required to expeditiously administer and dispose of volume of this magnitude are substantial. Unfortunately staffing levels are such that

administration requires that resources be diverted from other pending matters. Of prime importance to this decision is the fact that between 85% and 90% of respondent demanding arbitration do not reside in Nassau County.

Prior to August 2000 venue in this court was premised on the fact that the petitioner- carriers maintained an office for the conducting of business in Nassau County. In August of 2000 the legislature amended CPLR §7502 [L200 ch 7] to provide that, if not provided for in the agreement to arbitrate a petition to stay

> "Shall be brought in the County where
> the party seeking arbitration resides or
> is doing business".

The legislative rationale prompting such amendment set forth in an accompanying memorandum indicated;

> "Since stay applications are disfavored and impose
> additional costs over and above the arbitration, such
> application should be where it will not impose
> undue hardships on the party seeking arbitration".

The statute and its intent are obvious. A carrier seeking to stay an uninsured motorist arbitration demand must seek such stay in the county where the claimant resides so that its insured is not subjected to undue hardship. The provisions of §7502 as amended can not provide the basis for debate nor do they admit to an alternative interpretation. Given a clear and unambiguous statue and its manifest purpose it is difficult to perceive justification for carriers choosing to ignore its directives. A number have done so however, and done so in volume.

This and the 200 other petitions were instituted well after the effective date of the amendment to §7502 - i.e. 8/16/00. As in the past the petitions uniformly contain allegations that the carrier maintain offices for the conducting of business in this county. A number contain allegations that the insured is a resident of this State. In rare instances the county of the insured's residence is alleged. None make mention of the provisions of §7502 or seek to otherwise justify venue here. It is as if venue were a non-issue and the carriers involved existed in a paradigm in

which the amendment to §7502 and its motivating force did not exist or that uninsured claims had been exempted from its application.

Under ordinary circumstances it might be assumed that such widespread non-compliance was the result of a lack of an awareness of the legislation. Such an assumption cannot be made here, however. Not only did passage generate substantial discussion within uninsured circles (see, Dachs, Norman & Jonathan The New Venue Rule N.Y.L.J. 1/9/01, pg. 3, col. 1), for those proceedings instituted after September 1st, 2000, this court instituted a procedure whereby non-resident petitions were adjourned sua sponte to effect a change of venue on consent and inviting respondents to seek such a change in the event a consent was not forthcoming. The order adjourning the petitions set forth the amendment and its accompanying memorandum in detail.

There is no question then that all but the most isolated of carriers were aware of the passage of the amendment to §7502. A number most notably those constituting the "Roberts Plan" have accepted the inevitable and no longer institute non-resident petitions in this court. As this decision indicates a substantial number have not seen fit to comply. Of the 200 petitions being disposed of at this time GEICO is a petitioner in 57, Allstate in 40, State Farm in 39. A miscellaneous group of some 18 carriers have submitted 64. A review of court files indicate an additional 163 petitions are awaiting submission on dates after February 1, 2001. Given the existing ratios of resident to non-resident petition, it can conservatively be estimated that an additional 125 non resident petitions are pending in this court with the number increasing each day.

It should be obvious to any objective observer that carrier non-compliance can only be attributable to subjective reasons on their part. Being less than enthusiastic in their support of the amendment and its aims, the carriers are attempting to circumvent it. The extent of their disapprobation is evidenced by the volume of their non-compliance. We are not dealing with an isolated incident where Nassau County is being utilized for purposes of compliance with the statute of limitation or where special circumstances might exist for such a filing. Rather we have wholesale lot filings for the purpose of utilizing this court so as to avoid the inconvenience of having to place such venue elsewhere. Put another way offending carriers have opted to place their own convenience over that of their insureds. They have done so prior to August of 2000 with impunity and apparently can see no reason for not continuing to do so in the future.

Although the petitions are conspicuously silent as to a bases for venue in Nassau County, it seems certain that the carriers involved would seek to justify the unjustifiable by resort to the provisions of CPLR §509 which provide -

> Notwithstanding any provision of this article, the place of trial of an action shall be in the county designated by the plaintiff, unless the place of trial is changed to another county by order upon motion, or by consent as provided in subdivision (b) of rule 511.

Any such attempt is clearly misplaced. Since the resolution of the "pica polemic" in favor of print size over content, strict compliance with the often arcane technicalities of the Insurance Law and Commissioner's regulations has been a hallmark of the uninsured field. Rather than comply strictly with the provisions of §7502 as amended this and the other offending carriers would argue that the specific directives contained in Article 75 should yield to the amorphous provisions of §509 which by its terms is limited to venue provided in "this article" i.e. Article 5. Such logic can most charitably be described as being tenuous and certainly not in keeping with the bedrock principles of, "uninsured law". Moreover it is clear that premising of venue on the provisions of §509 would give rise to a situation wherein §509 would create the very evil sought to be avoided. Section 7502 was motivated by a desire to avoid the imposition of undue hardship on the party seeking arbitration. It cannot seriously be argued that forcing a respondent to resort to the provisions of CPLR §511 to obtain a venue which should have existed in the first place would not be considered such a hardship or that the delay occasioned in connection with a transfer would not frustrate an expeditious disposition of the issues raised in a proceedings which the legislative has noted can be categorized as being "disfavored"..

Sophistry aside, common sense dictates that there can be only one reason why some carriers would blatantly disregard the mandates of §7502. A desire to maintain a pre-amendment status quo for their own convenience because of an aversion on their part to adapting to procedures in existence in other courts. Obviously what the carriers have not factored into their decisions, or have chosen to disregard completely, is the effect such self-interest has on other litigants in this court whose cases are properly venued here and the effect on operations of the court itself in fulfilling its obligations with respect to such matters.

While prior to August of 2000 the court had the obligation to provide the judicial and clerical resources to process, administer and adjudicate these proceedings no matter what the volume, such a diversion of personnel can no longer be justified. Litigants in matters properly

brought here, including those Article 75 proceedings against resident claimants, are entitled to have their cases disposed of as expeditiously as possible. Contrary to petitioners' position the courts of this county do not exist for their convenience and the convenience of their counsel. They exist to insure that legislative directives and judicial precedent are complied with and applied in a just and expeditious manner. A total disregard of such objectives by one class of litigants should not and will not be tolerated merely because a carrier will be discommoded.

The court is not unmindful of the fact that a number of counsel who represent non-resident insureds find it more convenient to have their cases determined in this court and would prefer to litigate the issues here. Such a preference, of course, does not take into account the burden this places on their clients by having to come to Nassau County from the counties of Westchester, Rockland, and the City of New York or consider the convenience of other witnesses that might be required at hearings. As the implementation of Differential Case Management System with its highly structured time frames and the court's involvement in insuring that such standards are met attests, how a matter is to proceed is no longer within the sole province of the litigators. The court and its Judges are charged with the duly of insuring that matters are prosecuted and adjudicated in the most expeditious manner possible. No doubt an obligation to accommodate counsel exists. Such obligation must yield, however, if it conflicts with the court's obligation to the parties. It is certain that the obligation does not include that or providing a forum for a sub-group of litigators who for reasons best known to themselves prefer to litigate in Nassau County and not elsewhere. The judicial and clerical resources of this court are more properly assigned to matters in which the accepted rules of venue have been followed.

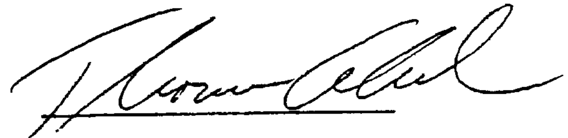
The issue of a court's position in a situation such as this is not a novel one. The former General Preference rule was addressed to it. More specifically as long ago as 1977, when volume in the uninsured field did not approach present levels, the Supreme Court in Westchester County addressed an identical problem in the concrete. A petition said to be properly venued in Nassau County had been brought in Westchester County. Mr. Justice Gagliardi in Allstate Ins. Co. v Wenter (75 Misc. 2 795) found that the court had the inherent power to control its own calendars in order to insure judicial resources were not diverted from other matters. He concluded that in the absence of a right to transfer sua sponte (see, Nixon v Federated Dept. Stores, 170 AD2nd 191) the appropriate solution to the problem was a denial of the petition to stay without prejudice to its renewal in a proper county. Clearly a similar disposition is more than appropriate in this and the other petitions decided simultaneously herewith.

Accordingly, the application for an order staying the subject arbitration is denied and judgment is granted in favor of respondents dismissing the petition without prejudice to the filing of a new petition in a proper county within 20 days after entry of this order. In the event petitioner fails to institute a proceeding within such time the parties are directed to proceed to arbitration.

One final matter should be noted while the issue of sanctions (see, 22NYCRR 202.130) has not been considered, should the situation arise in the future it will be.

The clerk is directed to mail a copy of the decision to petitioner who shall serve a copy on all parties.

Dated: 2/21/01



J.S.C.

x x x