

--- N.Y.S.2d ---, 2014 WL 6779107 (N.Y.A.D. 2 Dept.), 2014 N.Y. Slip Op. 08433
(Cite as: 2014 WL 6779107 (N.Y.A.D. 2 Dept.))

Supreme Court, Appellate Division, Second Department,
New York.

In the Matter of GOVERNMENT EMPLOYEES
INSURANCE COMPANY, appellant,

v.

Robert JOHNSON, respondent-respondent,
State Farm Mutual Automobile Insurance Company,
proposed additional respondent-respondent.

Dec. 3, 2014.

Gail S. Lauzon (Monfort, Healy, McGuire & Salley,
Garden City, N.Y. [Donald S. Neumann, Jr.], of
counsel), for appellant.

Martin, Fallon & Mullè, Huntington, N.Y. (Richard
C. Mullè of counsel), for proposed additional respon-
dent-respondent.

MARK C. DILLON, J.P., ROBERT J. MILLER,
JOSEPH J. MALTESE and COLLEEN D. DUFFY,
JJ.

*1 In a proceeding pursuant to CPLR article 75
to permanently stay arbitration of a claim for unin-
sured **motorist** benefits, the petitioner appeals from
an order of the Supreme Court, Kings County (Kurtz,
Ct.Atty.Ref.), entered December 20, 2012, which,
after a hearing, denied the petition.

ORDERED that the order is reversed, on the law,
with costs, and the petition to permanently stay arbi-
tration is granted.

The respondent, Robert Johnson, was involved in
a motor vehicle accident in which the car he was
driving collided with another vehicle that failed to
stop at a stop sign. The car he was driving was owned
by Johnson's sister, who lived in Ohio and was in-

sured under a personal automobile liability policy
issued in that state by the proposed additional re-
spondent, State Farm Mutual Automobile Insurance
Company (hereinafter State Farm). The policy con-
tained an endorsement for uninsured **motorist cover-
age**, which provided for liability limits of \$100,000
per person and \$300,000 per accident, but excluded
from the definition of an insured any person who is
insured for uninsured motor vehicle **coverage** under
another vehicle policy.

When Johnson eventually made a claim for unin-
sured **motorist** benefits under the State Farm policy,
State Farm disclaimed **coverage** on the ground that,
inasmuch as records showed that Johnson had unin-
sured motor vehicle **coverage** available through a
policy issued to him by the petitioner Government
Employees Insurance Company (hereinafter GEICO),
he did not meet the definition of an insured for pur-
poses of uninsured motor vehicle **coverage** under the
State Farm policy.

Following Johnson's demand for arbitration un-
der the uninsured **motorist** endorsement of his policy
with GEICO, GEICO commenced this proceeding
pursuant to CPLR article 75 to permanently stay arbi-
tration on the ground that State Farm was the primary
insurer. At the hearing, GEICO's counsel argued that
the exclusion in the State Farm uninsured **motorist**
endorsement is not valid in New York and, therefore,
the State Farm policy should be deemed to have the
full complement of **coverage** mandated by New York
to make the State Farm **coverage** primary. The Court
Attorney Referee disagreed and denied the petition.

“[I]nsurance policies, like all contracts, should
be enforced according to their terms unless they are
prohibited by public policy, statute or rule” (*Liberty
Mut. Ins. Co. v. Aetna Cas. & Sur. Co.*, 168 A.D.2d
121, 131). “If an attempted exclusion is not permitted

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by law, the insurer's liability under the policy cannot be limited" (*Matter of Liberty Mut. Ins. Co. [Hogan]*, 82 N.Y.2d 57, 60). Here, the exclusion contained in the uninsured **motorist coverage** endorsement of State Farm's personal automobile liability policy is not permitted by law. "Insurance Law § 3420(f)(1) requires that every automobile insurance policy contain an uninsured motor vehicle endorsement. Neither that statute nor any regulations applicable to it mentions any exclusions" (*Matter of Liberty Mut. Ins. Co. [Hogan]*, 82 N.Y.2d at 60; cf. 11 NYCRR 60-1.1[c][3][i]; Ohio Revised Code 3937.18). Since the exclusion is "without the approval or protection of the law" (*Rosado v. Eveready Ins. Co.*, 34 N.Y.2d 43, 48), it should not be given effect (see *Matter of Liberty Mut. Ins. Co. [Hogan]*, 82 N.Y.2d at 58; *Matter of Progressive Northeastern Ins. Co. v. Yeager*, 30 AD3d 524, 525-526).

*2 Further, where, as here, the policy does not contain a term stating that **coverage** is limited to the statutory minimum, if such exclusion is found to be invalid, no such limitation will be read into the policy (see *Royal Indem. Co. v. Providence Washington Ins. Co.* 92 N.Y.2d 653, 659; cf. *Connecticut Indem. Co. v. Hines*, 40 AD3d 903). Consequently, State Farm's policy must be read as affording liability up to its full limits.

Accordingly, the petition to permanently stay arbitration must be granted.

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Government Employees Ins. Co. v. Johnson

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