2014-2015 Review of UM/UIM/SUM Law and Practice

By Jonathan A. Dachs

This is the first in a two-part series detailing changes in uninsured motorist (UM), underinsured motorist (UIM) and supplementary uninsured motorist (SUM) law and practice in New York. This first part will include general information and highlights vital to UM practice. Part two will cover developments in UIM and SUM practice.

Yet again, I am honored and pleased to present this annual survey of recent developments in the area of UM, UIM and SUM law and practice, this time covering the period of 2014 and the first half of 2015. As in the past, this period was marked by a great deal of significant activity in this highly litigated, ever-changing and complex area of the law.

GENERAL ISSUES

Policy Construction and Interpretation

In *State Farm Mut. Auto. Ins. Co. v. Fitzgerald*,[1] the Court of Appeals observed that in interpreting the provisions of the UM and SUM endorsements, the general rule of construction of ambiguities against the drafter (insurer) (*contra proferentem*) will not hold because the insurers did not choose the terms of these endorsements of their own accord, but, rather, were required to include them in compliance with the statutes.[2] Policy provisions mandated by statute "must be interpreted in a neutral manner consis-

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tent with the intent of the legislative and administrative sources of the legislation."

"Motor Vehicle"

In *State Farm Mut. Auto. Ins. Co. v. Fitzgerald, supra*, the Court of Appeals addressed the question of whether a police vehicle qualifies as a "motor vehicle," as that term is used in the Supplementary Uninsured/Underinsured Motorist (SUM) endorsement, and held that it does not.

Fitzgerald, a police officer, was injured in an accident with an underinsured vehicle while riding as a passenger in an NYPD vehicle being driven by a fellow officer, Knauss. He demanded SUM arbitration under Knauss' personal auto policy with State Farm, which defined an "insured" as the named insured (i.e., Knauss) and "any other person while occupying . . . any other motor vehicle . . . being operated by [Knauss]." Judge Abdus-Salaam, writing for the majority, stated,

> An unbroken line of historical practice, legislative history, statutory text and precedent establishes that a SUM endorsement prescribed by Insurance Law §3420(f)(2)(a) exempts police vehicles from its definition of the term "motor vehicle" absent a specific provision to the contrary in a given SUM endorsement. Since there is no contrary provision in the SUM endorsement here, it does not cover liability for injuries arising from the use of a police vehicle of the sort occupied by Fitzgerald during his accident. While Fitzgerald may pursue the available remedies, if any, under the No-Fault Law, a lawsuit or any insurance policy he has purchased for himself, he cannot recover under the SUM endorsement of Knauss's policy.

In *State Farm Mut. Auto. Ins. Co. v. Jones*,[3] which involved an accident between two *snowmobiles*, the insurer for the snowmobile on which the claimant was riding denied his claim for SUM benefits on the ground that a snowmobile is not a "motor vehicle" as that term appears in the SUM endorsement, relying on the definition of "motor vehicle" contained in Vehicle and Traffic Law §§ 125 and 2229. Noting that the subject policy contained only one vehicle – a snowmobile – included a "Car Policy Booklet," a standard New York SUM endorsement, which defined an "insured," in pertinent part, as "any other person occupying . . . a motor vehicle insured for SUM under this policy," and a New York snowmobile endorsement, which amended the definitions of "car" and "private passenger car" in the policy to mean "snowmobile," the court held that "the policy, *when read as a whole*, is ambiguous as to whether the term 'motor vehicle' in the SUM endorsement refers to the snowmobile, the only vehicle covered by the policy. (emphasis added)." Construing that ambiguity against the insurer, the court rejected the insurer's disclaimer and denied the petition to stay arbitration.

Occupancy

Among the definitions of an "insured" under the UM and SUM endorsements is a person "occupying" a motor vehicle covered by those endorsements. The term "occupying" is defined as "in, upon, entering into, or exiting from a motor vehicle."

In *Boyson v. Kwasowsky*,[4] the court noted that in the UM/SUM context (as opposed to the No-Fault context), "A person may be vehicle oriented with respect to a particular vehicle (and thus considered an 'occupant' thereof) when not in physical contact with that vehicle, as long as the separation from the vehicle is temporary and brief, and provided there has been no severance of connection with it."[5]

In that particular case, dealing with no-fault coverage and involving an accident in which, in order to avoid a collision between a pickup truck and the motorcycle the plaintiff was riding as a passenger, the motorcycle driver veered to the left and dropped the motorcycle on its side, causing him and the plaintiff to fall off the motorcycle, and the riderless motorcycle to collide with the truck, become airborne, and land on top of the plaintiff. The court held that the plaintiff was "occupying" the motorcycle at the time of her injuries and concluded that there was a single accident and that the plaintiff was continuously "occupying" the motorcycle within the meaning of the insurance policies under which she made claim. "Although plaintiff was briefly separated from the motorcycle during the incident, she remained 'vehicle oriented.' Her separation from the motorcycle did not transform her status from an occupant of the motorcycle to a pedestrian during the brief interval between striking the ground and being struck by the motorcycle."[6]

Exclusions

In *Government Employees Ins. Co. v. Beltran*,[7] the court held that the exclusion in the SUM endorsement for bodily injury sustained by an insured while occupying a motor vehicle *owned by the insured but not covered under the policy under which the claim was made* was not ambiguous, and, therefore, the insurer was entitled to rely upon it to disclaim coverage to the claimant, who was riding his *own* motorcycle at the time of the accident.

In *New York Central Mut. Fire Ins. Co. v. Byfield*,[8] the court held that an exclusion in a liability policy relating to "any vehicle used to carry passengers or goods for hire [except a] vehicle used in an ordinary carpool on a ride sharing or cost-sharing basis," while perhaps broader than a "public or livery conveyance" exclusion, should not be construed so as to extend its scope beyond the public or livery conveyance exclusion.

The court also noted that "a single use of a vehicle for hire has been held not to make out use as a 'public livery or conveyance' [citing *National Grange Mut. Ins. Co. of Keene, N.H. v. Cervantes*[9]]."

In *State Farm Mut. Auto. Ins. Co. v. O'Brien*,[10] the claimant, who was employed as a mechanic, was asked by a customer to return the customer's loaner car to the dealer on his behalf. While doing so, the claimant was injured when the loaner vehicle, which the parties stipulated was a *"temporary substitute vehicle"* for the customer, was struck in the rear by another vehicle that carried only a basic $25,000/$50,000 policy. After receiving a tender of the offending vehicle's full available policy limits ($25,000), the claimant sought to recover SUM benefits under the customer's SUM policy with State Farm. Finding that State Farm had the burden to establish that the claimant's use of the "substitute temporary car" was excluded from SUM benefits, the court held that the purpose of the provision in the policy to which the SUM endorsement was attached relating to a temporary substitute vehicle

> is to afford continuous coverage to the insured during the period that a vehicle scheduled under the policy is out of commission, and at the same time limit the risk to the insurer to one operating vehicle at a time for a single, fair premium. Coverage for a substitute vehicle ceases when the insured vehicle is repaired and returned to its owner (citations omitted). Here, the SUM endorsement fails to articulate any exclusion for a "temporary substitute car."[11]

Therefore, the court denied State Farm's petition to stay and directed the parties to proceed to arbitration.

Claimant/Insured's Duty to Provide Timely Notice of Claim

In *Kleinberg v. Nevele Hotel*,[12] the court reiterated the well-known principle that "[w]here a policy of liability insurance requires that notice of an occurrence be given 'as soon as practicable,' such notice must be accorded the carrier within a reasonable period of time." The court also noted that because an injured party is allowed by law to provide notice to an insurance company,[13] he or she is generally held to any prompt notice condition precedent of the policy, but such an injured party can overcome an insurance company's failure to receive timely notice – which would otherwise vitiate coverage – by a demonstration that he or she did not know the insurer's identity despite his or her reasonably diligent efforts to obtain such information.[14]

In *Integrated Construction Services, Inc. v. Scottsdale Ins. Co.*,[15] the court observed that "'[a] provision that notice be given "as soon as practicable" after an accident or occurrence, merely requires that notice be given within a reasonable time under all the circumstances' (citations omitted). An insured's failure to provide the insurer notice within a reasonable period of time constitutes a failure to comply with a condition precedent which, as a matter of law, vitiates the contract (citations omitted)."

In *Guideone Ins. Co. v. Darkei Noam Rabbinical College*,[16] the court reminded that the amendment to the "no prejudice" rule for late notice may not be applied to cases involving policies issued before January 17, 2009; in such cases, the old common law rules apply.[17]

Discovery

In *USAA Ins. Co. v. Armstrong*,[18] the court noted that "while the SUM endorsement requires [the insurer] to pay respondents any amount to which respondents are 'legally entitled,' such payment is contingent upon the satisfaction of the 'Exclusions, Conditions, Limits, and other provisions of [the] SUM endorsement (citations omitted).' The conditions to be satisfied 'include the discovery provisions set forth in the SUM endorsement (citations omitted)."

The First Department, in *Governmental Empls. Ins. Co. v. Giamo*,[19] held, *inter alia*, that where a petition to stay arbitration is untimely brought, the court has no authority to direct the respondent to provide discovery to the petitioner.

In *Heimbach v. State Farm Ins. Co.*,[20] an action to recover SUM benefits, the court granted the plaintiff's motion to compel the defendant insurer to produce its entire claim file and to compel representatives of the insurer, including the claims representatives who handled the claim, to appear for depositions, on the ground that "[g]iven the scope of the liability and damages issues framed by the pleadings . . . plaintiff's request for the entire claim file was not palpably improper and . . . the disclosure was 'material and necessary' for the prosecution of plaintiff's action." The court also noted that the defendant insurer "failed to meet its burden of establishing that those parts of the claim file withheld from discovery . . . contain material that is privileged or otherwise exempt from discovery."[21]

In another action to recover SUM benefits, *Lalka v. ACA Ins. Co.*,[22] the plaintiff moved for an order compelling the insurer to disclose its entire claim file, or, in the alternative, to produce all documentation claimed to be privileged and/or confidential for *in camera* inspection. The court, citing *Nicastro v. New York Central Mutual Fire Ins. Co.*,[23] held that the part of the motion seeking disclosure of documents in the claim file created after the commencement of the action should be denied, but the Supreme Court abused its discretion in denying disclosure of those documents submitted for *in camera* inspection because

> it is well settled that "[t]he payment or rejection of claims is a part of the regular business of an insurance company. Consequently, reports which aid in the process of deciding which of the two indicated actions to pursue are made in the regular course of its business" (*Nicastro*, 117 A.D.3d at 1546). "Reports prepared by . . . attorneys before the decision is made to pay or reject a claim are thus not privileged and are discoverable . . . even when those reports are 'mixed/multi-purpose' reports, motivated in part by the potential for litiga-

tion with the insured." (*Bombard v. Amica Mut. Ins. Co.*, 11 A.D.3d 647, 648 [2004]; *see Bertalo's Restaurant v. Exchange Ins. Co.*, 240 A.D.2d 452, 454–455 [1997], *lv. dismissed* 91 N.Y.2d 848 [1997]).

In *Encompass Indemnity Co. v. Rich*,[24] the court held that the insurer was not entitled to a temporary stay of arbitration and an order directing the respondent to provide pre-arbitration discovery because the insurer "had ample time to seek discovery before commencing this proceeding and unjustifiably failed to do so."

Proceedings to Stay Arbitration

Civil Practice Law & Rules 7503(c) (CPLR) provides, in pertinent part, that "[a]n application to stay arbitration must be made by the party served within twenty days after service upon him of the notice [of intention to arbitrate] or demand [for arbitration], or he shall be so precluded."[25]

Filing and Service of Petition to Stay

The 20-day time limit in CPLR 7503(c) is construed as a period of limitations and is, thus, jurisdictional. Absent special circumstances, courts have no authority to consider an untimely application.[26]

An insured's failure to provide the insurer notice within a reasonable period of time constitutes a failure to comply with a condition precedent which, as a matter of law, vitiates the contract.

However, in *Liberty Mutual Ins. Co. v. Mohabir*,[27] the court held that the 20-day limitation, like any other statute of limitations defense, "is waivable [by a party], and failure to raise it does not deprive the court of jurisdiction." In this case, the claimants sent Liberty demands for arbitration of their alleged hit-and-run claims on July 12, 2007, and then again on July 31, 2007, which were received by Liberty on July 13, 2007 and August 1, 2007, respectively. Liberty moved to stay arbitration on August 20, 2007 on the ground that the alleged offending vehicle was identified and insured. In opposition to Liberty's petition to stay arbitration, the claimants did not raise an untimeliness defense. Nevertheless, the court denied the petition without prejudice on the ground that the evidence in support of the petition was "too sparse." Liberty subsequently moved again to stay arbitration, and the claimants again did not raise a timeliness defense. In March 2008, the court granted a temporary stay pending a framed issue hearing on the issues of insurance coverage. In July 2008, the court granted Liberty's motion to reargue, but adhered to its prior determination, and in December 2009, the Appellate Division affirmed. A framed issue hearing was held in June 2011, and resulted in an order granting a permanent stay of arbitration, dated July 20, 2011 and served with notice of entry on February 6, 2012. On April 19, 2012, the claimants moved by order to show cause to vacate the July 20, 2011 order, arguing for the first time that the court lacked jurisdiction to stay the arbitration because the initial petition was untimely insofar as it was filed more than 20 days after Liberty had received the first arbitration demand. Although the Supreme Court granted the claimants' motion and dismissed the petition as untimely, the First Department reversed.

As stated by the court,

> Under the particular circumstances of this case, respondents waived their statute of limitations defense when, after serving the request for arbitration a second time on July 31, 2007, they participated in the litigation for five years, during which time they failed to raise the CPLR 7503(c) defense in their opposition to petitioner's applications for a stay, in the prior appeal in which this Court ordered a framed issue hearing on coverage issues, or at the framed issue hearing itself (citations omitted).[28]

In *Governmental Empls. Ins. Co. v. Giamo*,[29] the court rejected the petitioner's attempt to excuse its failure to move to stay arbitration within 20 days of receipt of the demand by arguing – without sufficient proof – that the demand was "purposely concealed" in a package that included copies of the respondent's medical records. The evidence established that the petitioner's claims adjuster acknowledged receipt of the respondent's "demand letter," and subsequently denied the claim based upon a conclusion about the extent of the alleged injuries, which must have been made after review of the records provided in the package. Also, the package included a copy of an affidavit of service indicating that an arbitration demand had been served. Thus, the court concluded that "rather than demonstrate concealment, the record indicates that petitioner was likely careless in failing to note the demand."[30]

The court, in *Allstate Ins. Co. v. Laldharry*,[31] held that an insurer seeking to stay arbitration on the ground that the claimant(s)/respondent(s) failed to comply with the terms of the uninsured or supplementary uninsured/underinsured motorists endorsement must submit a copy of the portions of the policy that contain those terms or the petition may be denied.

In *Allstate Ins. Co. v. Marke*,[32] the court held that where there is *no agreement to arbitrate*, a petitioner seeking a stay of arbitration is not bound by the 20-day period of limitations set forth in CPLR 7503(c). In that case, there was no agreement to arbitrate, and therefore, the 20-day limitation

did not apply because the respondent was a pedestrian struck by the vehicle operated by the Allstate insured, and not an occupant of that vehicle, and, thus, not an insured within the meaning of the SUM endorsement.[33]

The Second Department, in *Government Empls. Ins. Co. v. Terrelonge*,[34] noted that the 20-day period for filing a petition to stay arbitration begins to run only upon receipt of the notice of intention to arbitrate (demand for arbitration). Furthermore, "'[t]he timeliness of a proceeding for a stay of arbitration is measured with respect to the earlier filing of the petition, not with respect to its later service' (citations omitted)."[35] Because, in this case, GEICO received the notice of intention to arbitrate on July 15, 2013, and commenced the proceeding to permanently stay arbitration by filing its notice of petition on August 1, 2013, the proceeding was deemed timely commenced.[36]

In *American Commerce Ins. Co. v. Nowicki*,[37] where the petitioner received the demand for arbitration on June 3, 2013, but did not file its notice of petition and petition until July 1, 2013, which was beyond the 20-day limitation period, the court held that the proceeding was time-barred.

The court also noted, in *Travelers Property Casualty Ins. Co. of America v. Archibald*,[38] that the application to stay arbitration is deemed made when the petition is *filed*.

In *Preferred Mutual Ins. Co. v. Fisher*,[39] the claimant and the SUM insurer entered into a stipulation to temporarily stay arbitration to enable pre-arbitration discovery. The insurer subsequently moved for a permanent stay of arbitration on the ground that the claimant was not a *resident relative* of the insureds. Although the Supreme Court denied the petition to stay arbitration on the ground that the stipulation waived the issue of the claimant's entitlement to benefits, the Appellate Division reversed, holding that

> although the stipulation stated that "[u]pon the completion of [certain] discovery set forth [in the stipulation, petitioner] agrees to proceed to arbitration," a stipulation cannot create coverage of an individual, nor the obligation to arbitrate the issue of coverage, where the individual does not meet the relevant contractual prerequisites for coverage (citations omitted). Stated differently, the stipulation cannot independently bind petitioner to supply coverage where no such coverage exists under the policy.[40]

In *New York City Transit Authority v. Powell*,[41] the court reversed the determination of the Supreme Court that the injured parties/claimants had abandoned their demand for arbitration of their UM claims, and held that the issue of undue delay or abandonment could be ruled upon by the arbitrator. Although more than three years had elapsed between the service of the original demand and the filing of that demand with the AAA, there was evidence in the record that was inconsistent with an intent to abandon, and the demand was filed within the six-year limitation period for filing a UM claim against a self-insurer.

Absent special circumstances, courts have no authority to consider an untimely application.

Burden of Proof

In *Merchants Preferred Ins. Co. v. Waldo*,[42] the court noted that "'The party seeking a stay of arbitration has the burden of showing the existence of sufficient evidentiary facts to establish a preliminary issue which would justify the stay' (citations omitted). Thereafter, the burden shifts to the party opposing the stay to rebut the *prima facie* showing (citations omitted)."

Appealability of Order Denying Stay of Arbitration

Although the right to take a direct appeal from an order denying a petition to stay and directing arbitration exists, such right may be illusory unless the petitioner obtains a stay of the arbitration pending the determination of the appeal.

In *State Farm Ins. Co. v. Banyan*,[43] the respondents filed a demand for SUM arbitration based on the allegation that a vehicle operated by Respondent Victor Banyan had been struck by an unidentified vehicle that left the scene of the accident. State Farm contested the claim that the accident was caused by physical contact with the other vehicle, and commenced a proceeding to stay arbitration.

After a hearing, the Supreme Court determined that physical contact had occurred and, among other things, denied the petitioner's request for a permanent stay of arbitration. Although State Farm then filed a notice of appeal, it did not seek an interim stay, nor did it perfect the appeal within the requisite time period. Meanwhile, the parties proceeded to arbitration and the respondents were awarded the full value of the policy. Only thereafter did State Farm move for an extension of time to perfect the appeal from Supreme Court's order finding physical contact. Although the court granted the motion, and allowed State Farm to perfect its appeal, it subsequently dismissed the appeal on the ground that State Farm "waived its right to appeal by proceeding to arbitration without seeking a stay pending determination of its appeal."[44]

Arbitration

In *Fiduciary Ins. Co. v. American Bankers Ins. Co. of Florida*,[45] the court noted that "[a]n arbitrator's authority generally

'extends to only those issues that are actually presented by the parties' (citations omitted). Therefore, an arbitrator is precluded from identifying and considering an affirmative defense that is not pleaded by a party to the arbitration."

In *Serrano v. Progressive Ins. Cos.*,[46] the court noted that where, as in that case, the coverage amount was limited to the statutory minimums of $25,000 per person/$50,000 per accident, arbitration of a dispute with respect to the amount owing under either the UM provision or the SUM coverage provision was mandatory. Practitioners should note that pursuant to the terms of the Regulation 35-D (Condition 12) SUM endorsement, where the coverage amount *exceeds* 25/50, the insured has the option of either arbitration or a lawsuit.

Arbitration Awards

Scope of Review. In *Government Employees Ins. Co. v. Schussheim*,[47] the court observed that "'judicial review of arbitration awards is extremely limited' (citations omitted). 'A party seeking to overturn an arbitration award on one or more grounds stated in CPLR 7511(b)(1) bears a "heavy burden" (citations omitted).' The movant has to demonstrate that vacatur is appropriate by clear and convincing evidence (citations omitted).'" Here, the claimant failed to establish by clear and convincing evidence that the arbitrator was biased against her and in favor of her adversary. Her contention that the arbitrator had *ex parte* communications with opposing counsel about the case while they waited in the hearing room for her, because she was more than a half hour late, was rejected as "speculative."

The Second Department, in *David v. Byron*,[48] held that "[a] party seeking to overturn an arbitration award on one or more grounds stated in CPLR 7511(b)(1) bears a heavy burden, and must establish a ground for vacatur by clear and convincing evidence (citations omitted)." Furthermore, "[a]n arbitrator's partiality may be established by an actual bias or the appearance of bias from which a conflict of interest may be inferred (citations omitted)."[49]

In *Merkin v. Born*,[50] the court stated that "[t]he adequacy of an arbitral award is not grounds for review."[51] ■

1. 25 N.Y.3d 799 (2015), *rev'g*, 112 A.D.3d 166 (2d Dep't 2013).
2. Insurance Law §§ 3420(f)(1) and (f)(2) (Ins. Law); N.Y. Comp. Codes R. & Regs. tit. 11, § 60-2.3(f) (N.Y.C.R.R.).
3. 128 A.D.3d 1074 (2d Dep't 2015).
4. 129 A.D.3d 151 (4th Dep't 2015), *motion for lv. to appeal denied*, 26 N.Y.3d 901 (2015).
5. *Id.* at 155 (citing, *inter alia*, *Rice v. Allstate Ins. Co.*, 32 N.Y.2d 6, 11 (1973)).
6. *Id.* at 157.
7. 120 A.D.3d 684 (2d Dep't 2014).
8. 126 A.D.3d 704, 705 (2d Dep't 2015).
9. 17 A.D.2d 1002 (3d Dep't 1962).
10. 120 A.D.3d 1252 (2d Dep't 2014).
11. *Id.* at 1253.
12. 128 A.D.3d 1126, 1127 (3d Dep't 2015).
13. *See* Ins. Law § 3420(a)(3).
14. *See also 24 Fifth Owners, Inc. v. Sirius Am. Ins. Co.*, 124 A.D.3d 551 (1st Dep't 2015).
15. 123 A.D.3d 770, 771 (2d Dep't 2014).
16. 120 A.D.3d 625 (2d Dep't 2014).
17. *See also Castlepoint Ins. Co. v. Hilmand Realty, LLC*, 130 A.D.3d 475 (1st Dep't 2015).
18. 124 A.D.3d 1383, 1384 (4th Dep't 2015).
19. 115 A.D.3d 458 (1st Dep't 2014).
20. 114 A.D.3d 1221, 1222 (4th Dep't 2014).
21. *Id.*
22. 128 A.D.3d 1508 (4th Dep't 2015).
23. 117 A.D.3d 1545 (4th Dep't 2014), *lv. dismissed*, 24 N.Y.3d 998 (2014).
24. 131 A.D.3d 476, 479 (2d Dep't 2015).
25. *See Gov't Empls. Ins. Co. v. Terrelonge*, 126 A.D.3d 792, 793 (2d Dep't 2015).
26. *See Liberty Mut. Ins. Co. v. Mohabir*, 115 A.D.3d 413 (1st Dep't 2014); *Gov't Empls. Ins. Co. v. Gianno*, 115 A.D.3d 458 (1st Dep't 2014) (20-day limitation is "strictly enforced and a court has no jurisdiction to entertain an untimely application").
27. 115 A.D.3d 413, 414 (1st Dep't 2014).
28. *Id.*
29. 115 A.D.3d 458 (1st Dep't 2014).
30. *Id.*
31. 130 A.D.3d 814 (2d Dep't 2015).
32. 121 A.D.3d 1107 (2d Dep't 2014).
33. *See Progressive Specialty Ins. Co. v. Louis*, 122 A.D.3d 637 (2d Dep't 2014).
34. 126 A.D.3d 792 (2d Dep't 2015).
35. *Id.* at 793.
36. *See also Travelers Prop. Casualty Ins. Co. of Am. v. Archibald*, 124 A.D.3d 480 (1st Dep't 2015).
37. 120 A.D.3d 670 (2d Dep't 2014).
38. 124 A.D.3d 480 (1st Dep't 2015).
39. 127 A.D.3d 1328 (3d Dep't 2015).
40. *Id.* at 1329.
41. 126 A.D.3d 705 (2d Dep't 2015).
42. 125 A.D.3d 864, 865 (2d Dep't 2015).
43. 131 A.D.3d 747 (3d Dep't 2015).
44. *Id.* at 748. *See Commerce & Indus. Ins. Co. v. Nester*, 90 N.Y.2d 255, 264 (1997); *One Beacon Ins. Co. v. Bloch*, 298 A.D.2d 522, 523 (2d Dep't 2002).
45. 132 A.D.3d 40, 44 (2d Dep't 2015).
46. 123 A.D.3d 1000 (2d Dep't 2014).
47. 122 A.D.3d 849, 849–50 (2d Dep't 2015), *motion for lv. to appeal denied*, 26 N.Y.3d 901 (2015).
48. 130 A.D.3d 772, 773 (2d Dep't 2015).
49. *Id.*
50. 127 A.D.3d 576, 577 (1st Dep't 2015).
51. *See also Fiduciary Ins. Co. v. Am. Bankers Ins. Co. of Florida*, 132 A.D.3d 26 (2d Dep't 2015) ("in this proceeding pursuant to CPLR article 75 to vacate the arbitrator's award, our judicial review is limited").