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CPLR 7503: Service of notice of motion to stay arbitration.

Under CPLR 7503(c), notice of an application to stay arbitration must be served in the same manner as a summons, or, by registered or certified mail, return receipt requested. Conflict has arisen as to whether service of the notice must be made upon the party or upon his attorney as designated in the demand to arbitrate.

The appellate division, second department, in *Statewide Insurance Co. v. Lopez*,⁷⁹ recently resolved the conflict within its department in favor of service on the party. In doing so, it apparently rejected the rationale of *Matter of Appis*,⁸⁰ which upheld service upon the attorney where the party had designated his attorney as his representative in the notice of intention to arbitrate. The *Appis* court had concluded that such service was within the intentment of CPLR 7503(c), but also noted that the attorney had interposed an answer, thereby waiving any jurisdictional defect.

In *Matter of Commercial Union Insurance Company of New York*,⁸¹ the Supreme Court, Monroe County, relying upon the authority of *Lopez* and CPLR 7503(c) held that service upon the attorney was ineffective to give jurisdiction. This case is in accord with *Matter of Bauer*,⁸² also requiring service upon the party.

Interlocutory papers may be served upon a party's attorney. When a party has commenced a special proceeding to compel arbitration, the other party, in moving to stay such arbitration, should be allowed to make service upon the instituting party's attorney. When the application to stay arbitration is the first application to the court arising out of an arbitrable controversy, it must be made by commencing a special proceeding. In this instance service must be made either as a summons or by registered or certified mail, return receipt requested, *i.e.*, on the adverse party.

It is suggested, however, that, until the Court of Appeals makes a definitive ruling, the cautious practitioner serve both the adverse party and his attorney.

⁷⁹ 30 App. Div. 2d 694, 291 N.Y.S.2d 928 (2d Dep't 1968). For a discussion of *Lopez*, see *The Quarterly Survey of New York Practice*, 43 ST. JOHN'S L. REV. 498, 532 (1969).

⁸⁰ 56 Misc. 2d 969, 290 N.Y.S.2d 617 (Sup. Ct. Westchester County 1968).

⁸¹ 58 Misc. 2d 164, 295 N.Y.S.2d 16 (Sup. Ct. Monroe County 1968).

⁸² 55 Misc. 2d 991, 287 N.Y.S.2d 206 (Sup. Ct. Wyoming County 1968). For a discussion of *Bauer* see *The Quarterly Survey of New York Practice*, 43 ST. JOHN'S L. REV. 302, 344-45 (1968).