

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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_____AD3d_____

Argued - October 12, 2006

ANITA R. FLORIO, J.P.
GABRIEL M. KRAUSMAN
STEVEN W. FISHER
JOSEPH COVELLO, JJ.

2006-03909

DECISION & ORDER

In the Matter of Allstate Insurance Company,
appellant, v Ernico Vitiello, respondent; Proformance
Insurance Company, proposed additional respondent.

(Index No. 80418/05)

Robert P. Tusa (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum] of counsel), for appellant.

Castro & Associates, P.C., New York, N.Y. (Violet Samuels of counsel), for respondent.

Abrams, Gorelick, Friedman & Jacobson, P.C., New York, N.Y. (Jay Gunsher of counsel), for proposed additional respondent.

In a proceeding pursuant to CPLR article 75, inter alia, to permanently stay arbitration of an uninsured motorist claim, the petitioner Allstate Insurance Company appeals, as limited by its brief, from so much of an order of the Supreme Court, Richmond County (McMahon, J.), dated March 21, 2006, as denied that branch of its petition which was to permanently stay arbitration.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs.

The undisputed evidence in the record supports a determination that the offending vehicle— which was owned by a nonresident and, if insured at all at the time of the subject accident, was insured by an out-of-state carrier not authorized to transact business in the State of New York and not subject to personal jurisdiction in this State— was an “uninsured motor vehicle” within the

meaning of Insurance Law article 52 (*see* Insurance Law §§ 5202[c], [d]; Vehicle and Traffic Law §§ 311[3], [4]).

The appellant's remaining contentions either are unpreserved for appellate review or without merit.

FLORIO, J.P., KRAUSMAN, FISHER and COVELLO, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court