

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

D14719  
W/gts

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - March 8, 2007

STEPHEN G. CRANE, J.P.  
GABRIEL M. KRAUSMAN  
JOSEPH COVELLO  
EDWARD D. CARNI, JJ.

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2006-01079

DECISION & ORDER

Fremont Realty, Inc., appellant, v  
P&N Iron Works, Inc., et al., defendants,  
Zurich American Insurance Co.,  
respondent.

(Index No. 04528/04)

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Oxman Tulis Kirkpatrick Whyatt & Geiger, LLP, White Plains, N.Y. (Gregory J. Spaun of counsel), for appellant.

Scarola Ellis LLP, New York, N.Y. (Richard J.J. Scarola of counsel), for respondent.

In an action, inter alia, to recover damages for negligence and breach of contract, the plaintiff appeals, as limited by its brief, from so much of an order of the Supreme Court, Westchester County (Colabella, J.), entered December 9, 2005, as granted that branch of the motion of the defendant Zurich American Insurance Co. which was for summary judgment dismissing the complaint insofar as asserted against it.

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

On its motion for summary judgment dismissing the complaint insofar as asserted against it, the defendant Zurich American Insurance Co. (hereinafter Zurich), which had issued a particular insurance policy to the plaintiff, demonstrated its entitlement to judgment as a matter of law by submitting evidence establishing, inter alia, that it had no duty to advise the plaintiff to obtain certain additional insurance coverage (*see Chaim v Benedict*, 216 AD2d 347; *Erwig v Cook Agency*,

April 10, 2007

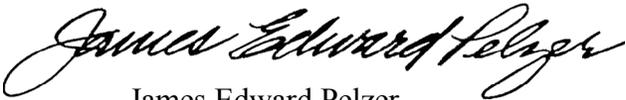
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173 AD2d 439). Since, in response to this showing, the plaintiff failed to raise a triable issue of fact (see *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324), the Supreme Court correctly granted that branch of Zurich's motion which was for summary judgment dismissing the complaint insofar as asserted against it.

CRANE, J.P., KRAUSMAN, COVELLO and CARNI, 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