

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

D16295  
Y/hu

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

Argued - September 4, 2007

STEPHEN G. CRANE, J.P.  
GLORIA GOLDSTEIN  
PETER B. SKELOS  
EDWARD D. CARNI, JJ.

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2006-02234  
2006-06990

DECISION & ORDER

In the Matter of Progressive Northwestern  
Insurance Company, respondent-appellant,  
v Prec Gjonaj, et al., appellants-respondents,  
et al., proposed additional respondents.

(Index No. 18643/02)

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Antin, Ehrlich & Epstein, P.C., New York, N.Y. (Jeffrey S. Antin of counsel), for  
appellants-respondents.

John C. Buratti, Yonkers, N.Y. (Michael A. Zarkower of counsel), for respondent-  
appellant.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration of a claim  
for uninsured motorist benefits, Prec Gjonaj and Lena Popovic appeal (1) from an order of the  
Supreme Court, Westchester County (Friedman, J.H.O.), dated January 11, 2006, which granted the  
petition, and (2), as limited by their brief, from so much of an order of the same court entered March  
31, 2006, as, upon reargument, in effect, adhered to the prior determination, and the petitioner cross-  
appeals from so much of the order entered March 31, 2006, as, upon reargument, struck the word  
“permanently” from the order dated January 11, 2006.

ORDERED that the appeal from the order dated January 11, 2006, is dismissed, as  
that order was superseded by the order entered March 31, 2006, made upon reargument; and it is  
further,

September 25, 2007

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MATTER OF PROGRESSIVE NORTHWESTERN  
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ORDERED that the order entered March 31, 2006, is reversed insofar as appealed from, on the law and the facts, and upon reargument, the order dated January 11, 2006, is vacated, the petition is denied, and the proceeding is dismissed; and it is further,

ORDERED that the cross appeal is dismissed as academic in light of our determination on the appeal; and it is further,

ORDERED that one bill of costs is awarded to the appellants-respondents.

The petitioner's failure to meet its initial burden of showing that the offending vehicle was, in fact, insured on the date of the accident mandated denial of the petition and dismissal of the proceeding (*see Matter of Allstate Ins. Co. v Holloway*, 272 AD2d 539, 539-540; *Matter of Eagle Ins. Co. v McPherson*, 271 AD2d 689, 689; *Matter of Prudential Prop. & Cas. Ins. Co. v Campbell*, 227 AD2d 628; *Matter of Eagle Ins. Co. v Battershield*, 225 AD2d 545, 545; *cf. Matter of State Farm Mut. Auto. Ins. Co. v Youngblood*, 270 AD2d 493, 493-494).

CRANE, J.P., GOLDSTEIN, SKELOS and CARNI, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court