

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

D17876
C/kmg

_____AD3d_____

Argued - December 11, 2007

DAVID S. RITTER, J.P.
HOWARD MILLER
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2006-10027

DECISION & ORDER

In the Matter of State Farm Mutual Automobile
Insurance Company, petitioner-respondent,
v Carla Mazyck, etc., et al., respondents,
RLI Insurance Company, appellant.

(Index No. 19819/03)

Smith Mazure Director Wilkins Young & Yagerman, P.C., New York, N.Y. (Kisha V. Augustin of counsel), for appellant.

Martin, Fallon & Mullé, Huntington, N.Y. (Richard C. Mullé of counsel), for petitioner-respondent.

In a proceeding pursuant to CPLR article 75 to stay arbitration of an uninsured motorist claim, RLI Insurance Company appeals from a judgment of the Supreme Court, Queens County (Rios, J.), entered August 21, 2006, which, after a hearing, granted the petition.

ORDERED that the judgment is affirmed, with costs.

The petitioner, State Farm Mutual Insurance Automobile Insurance Company, met its burden of establishing, prima facie, the existence of insurance coverage by RLI Insurance Company (hereinafter RLI) for the vehicle that was involved in the subject accident on May 25, 2002, through the submission of a police accident report and RLI's response to a notice to admit. The burden thus shifted to RLI to establish a lack of coverage or a timely and valid disclaimer of coverage (*see Mercury Ins. Group v Ocana*, 46 AD3d 561; *Eagle Insurance Company v Rodriguez*, 15 AD3d

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399; *Allstate Insurance Company v Frederick*, 266 AD2d 283).

RLI failed to meet its heavy burden of establishing a valid disclaimer based on the asserted lack of cooperation of its insured, Sunrise Auto Enterprises, Inc. (*see Preferred Mut. Ins. Co. v SAV Carpentry, Inc.*, 44 AD3d 921; *Allstate Ins. Co. v United Intl. Ins. Co.*, 16 AD3d 605). RLI also failed to meet its burden of justifying the delay in its purported service of a notice of disclaimer (*see Delphi Restoration Corp. v Sunshine Restoration Corp.*, 43 AD3d 851). An unsatisfactory explanation renders delay in disclaiming coverage unreasonable as a matter of law (*see First Fin. Ins. Co. v Jetco Contr. Corp.*, 1 NY3d 64; *Tully Constr. Co. Inc. v TIG Ins. Co.*, 43 AD3d 1150).

RLI's remaining contentions are without merit.

RITTER, J.P., MILLER, DILLON and ANGIOLILLO, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court