

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

D18774
O/kmg

_____AD3d_____

Submitted - March 6, 2008

ROBERT A. SPOLZINO, J.P.
HOWARD MILLER
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2006-11807

DECISION & ORDER

In the Matter of Travelers Insurance Company,
respondent, v Rondu Bynum, etc., appellant.

(Index No. 5697/06)

Finkelstein & Partners, LLP, Newburgh, N.Y. (George A. Kohl 2nd of counsel), for
appellant.

Karen C. Dodson, White Plains, N.Y. (Andre Del Re of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration of an
uninsured motorist claim, the appeal is from an order of the Supreme Court, Orange County
(McGuirk, J.), dated August 23, 2006, which granted the petition and permanently stayed the
arbitration.

ORDERED that the order is reversed, on the law, without costs or disbursements, and
the matter is remitted to the Supreme Court, Orange County, for further proceedings in accordance
herewith.

Contrary to the Supreme Court's conclusion, the vehicle in which the appellant's
decedent was killed was an uninsured motor vehicle (*see Rowell v Utica Mut. Ins. Co.*, 77 NY2d 636,
639; *Matter of Liberty Mut. Ins. Co. v Saravia*, 271 AD2d 534).

Furthermore, under the circumstances presented, we conclude that the Supreme Court
should have conducted a hearing to determine whether the appellant's decedent was an "insured"

April 8, 2008

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within the meaning of the subject policy (*cf. Matter of Liberty Mut. Ins. Co. v Saravia*, 271 AD2d 534; *Matter of Graphic Arts Mut. Ins. Co.*, 214 AD2d 976). Accordingly, we remit the matter for such a hearing and thereafter, for a new determination of the petition to permanently stay arbitration of the uninsured motorist claim.

SPOLZINO, J.P., MILLER, COVELLO and BALKIN, 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