

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

D20307  
W/prt

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

Argued - June 23, 2008

ROBERT A. SPOLZINO, J.P.  
ROBERT A. LIFSON  
THOMAS A. DICKERSON  
CHERYL E. CHAMBERS, JJ.

2007-05273  
2008-04140

DECISION & ORDER

In the Matter of Firemen's Insurance Company,  
petitioner-respondent-appellant, v Alysha Clinton,  
et al., respondents-respondents; et al., proposed  
additional respondents; Lexington Insurance  
Company, et al., proposed additional  
respondents-respondents; Progressive  
Northeastern Insurance Company, proposed  
additional respondent-appellant-respondent.

(Index No. 989/06)

Lewis Johs Avallone Aviles LLP, Melville, N.Y. (Elizabeth A. Fitzpatrick of counsel),  
for proposed additional respondent-appellant-respondent.

Feeney & Associates, PLLC, Hauppauge, N.Y. (Rosa M. Feeney of counsel), for  
petitioner-respondent-appellant.

Law Office of Michael M. Goldberg, P.C., New York, N.Y. (Frank Guzman of  
counsel), for respondents-respondents.

Lester Schwab Katz & Dwyer, LLP, New York, N.Y. (Harry Steinberg and Steven  
B. Prystowsky of counsel), for proposed additional respondents-respondents.

In a proceeding to permanently stay arbitration of a claim for supplemental uninsured  
motorist benefits, Progressive Northeastern Insurance Company appeals from (1) a decision of the

September 9, 2008

Page 1.

MATTER OF FIREMEN'S INSURANCE COMPANY v CLINTON

Supreme Court, Suffolk County (Blydenburgh, J.), dated April 26, 2007, and (2) an order of the same court entered April 1, 2008, which, upon the decision, made after a framed issue hearing, granted the petition, and the petitioner cross-appeals from the decision.

ORDERED that the appeal and cross appeal from the decision are dismissed, without costs or disbursements, as no appeal or cross appeal lies from a decision (*see Schicchi v J.A. Green Constr. Corp.*, 100 AD2d 509); and it is further,

ORDERED that the order is affirmed; and it is further,

ORDERED that one bill of costs is awarded to the petitioner, the respondents-respondents, and the proposed additional respondents-respondents appearing separately and filing separate briefs, payable by Progressive Northeastern Insurance Company.

Contrary to the contention of Progressive Northeastern Insurance Company, the claimants provided it with notice of the accident as soon as practicable (*see Insurance Law § 3420[a][3]*; *Allstate Ins. Co. v Marcone*, 29 AD3d 715; *Steinberg v Hermitage Ins. Co.*, 26 AD3d 426; *Kahn v Allstate Ins. Co.*, 17 AD3d 408; *Jenkins v Burgos*, 99 AD2d 217; *Lauritano v American Fid. Fire Ins. Co.*, 3 AD2d 564, 568, *affd* 4 NY2d 1028).

The parties' remaining contentions are without merit or are not properly before this Court. We reach no determination with respect to the priority of coverage provided by Progressive Northeastern Insurance Company in relation to other coverage, if any, provided by the insurance carrier or carriers for the adverse vehicle owned by the proposed additional respondent-respondent Atlanta Toyota.

SPOLZINO, J.P., LIFSON, DICKERSON and CHAMBERS, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court