

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

D23152  
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\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 26, 2009

ROBERT A. SPOLZINO, J.P.  
MARK C. DILLON  
ANITA R. FLORIO  
ARIEL E. BELEN, JJ.

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2008-05531

DECISION & ORDER

In the Matter of Progressive Northeastern Insurance Company, appellant, v David Gibson, respondent; Lincoln General Insurance Company, additional respondent-respondent, et al., additional respondents.

(Index No. 30996/07)

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Buratti, Kaplan, McCarthy & McCarthy, Yonkers, N.Y. (Michael A. Zarkower of counsel), for appellant.

Lester Schwab Katz & Dwyer, LLP, New York, N.Y. (John Sandercock and Steven B. Prystowsky of counsel), for additional respondent-respondent.

In a proceeding pursuant to CPLR article 75, inter alia, to permanently stay arbitration of an uninsured motorist claim, the petitioner appeals, as limited by its brief, from so much of an order of the Supreme Court, Kings County (Kurtz, J.), dated February 8, 2008, as, after a framed-issue hearing, in effect, denied that branch of the petition which was to permanently stay arbitration.

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

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 that branch of the petition which was to permanently stay arbitration (*see Matter of Progressive Northwestern Ins. Co. v Gjonaj*, 43

May 12, 2009

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MATTER OF PROGRESSIVE NORTHEASTERN INSURANCE COMPANY v GIBSON

AD3d 1169; *Matter of Allstate Ins. Co. v Holloway*, 272 AD2d 539, 539-540; *Matter of Eagle Ins. Co. v McPherson*, 271 AD2d 689; *Matter of Eagle Ins. Co. v Battershield*, 225 AD2d 545).

SPOLZINO, J.P., DILLON, FLORIO and BELEN, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer  
Clerk of the Court