

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

D25364
C/kmg

_____AD3d_____

Argued - November 17, 2009

REINALDO E. RIVERA, J.P.
MARK C. DILLON
HOWARD MILLER
SHERI S. ROMAN, JJ.

2009-04946

DECISION & ORDER

In the Matter of State Farm Mutual Automobile
Insurance Company, appellant, v Karl Waite, respondent.

(Index No. 16180/08)

Picciano & Scahill, P.C., Westbury, N.Y. (Francis J. Scahill and Gilbert J. Hardy of counsel), for appellant.

Allen L. Rothenberg (Scott J. Rothenberg and Louis A. Badolato, Roslyn Harbor, N.Y., of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to permanently stay the arbitration of a claim for supplementary underinsured motorist benefits, the petitioner appeals from an order of the Supreme Court, Nassau County (Mahon, J.), entered April 17, 2008, which denied its petition and, in effect, dismissed the proceeding as untimely.

ORDERED that the order is affirmed, with costs.

Contrary to the petitioner's contentions, the Supreme Court properly denied its petition to permanently stay arbitration of the respondent's underinsured motorist claim as time-barred by the 20-day statutory period set forth in CPLR 7503(c) (*see Matter of Fiveco, Inc. v Haber*, 11 NY3d 140, 145; *Matter of Liberty Mut. Ins. Co. v Argueta*, 59 AD3d 446, 447). The respondent came within the definition of an "insured" in the supplementary uninsured/underinsured motorists endorsement at issue, and the petition to stay arbitration was based upon an exclusion in

December 15, 2009

Page 1.

MATTER OF STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY v WAITE

that endorsement rather than a lack of coverage (*see Matter of Worcester Ins. Co. v Bettenhauser*, 95 NY2d 185, 189; *Matter of Allstate Ins. Co. v Doyle*, 64 AD3d 775, 776; *Matter of Nova Cas. Co. v Martin*, 57 AD3d 548; *Matter of Allstate Ins. Co. v Arpaia*, 276 AD2d 628).

RIVERA, J.P., DILLON, MILLER and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style with a large initial "J".

James Edward Pelzer
Clerk of the Court