

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

D25586  
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Argued - December 1, 2009

REINALDO E. RIVERA, J.P.  
HOWARD MILLER  
JOHN M. LEVENTHAL  
CHERYL E. CHAMBERS, JJ.

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2008-10402

DECISION & ORDER

In the Matter of Integon National Insurance Company,  
petitioner-respondent, v Michael Montagna,  
respondent, National Liability and Fire Insurance  
Company, et al., respondents-respondents, Liberty  
Mutual Insurance Company, et al., respondents-  
appellants; et al., additional respondents.

(Index No. 19964/05)

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Jaffe & Asher LLP, New York, N.Y. (Marshall T. Potashner and Barak P. Cardenas of counsel), for respondent-appellant Liberty Mutual Insurance Company.

Nicoletti Gonson Spinner & Owen LLP, New York, N.Y. (Edward S. Benson of counsel), for respondent-appellant Diamond State Insurance Company.

Theodore A. Stamas, Carle Place, N.Y. (Ira Cooper of counsel), for petitioner-respondent.

Siben and Siben LLP, Bay Shore, N.Y. (Alan G. Faber of counsel), for respondent.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration of an uninsured motorist claim, Liberty Mutual Insurance Company appeals and Diamond State Insurance Company separately appeals from an order of the Supreme Court, Suffolk County (Pitts, J.), dated September 18, 2008, which granted the petition.

ORDERED that the order is affirmed, with one bill of costs to the petitioner-respondent, payable by the respondents-appellants.

After the petitioner, Integon National Insurance Company (hereinafter Integon) established, prima facie, that the respondents Liberty Mutual Insurance Company (hereinafter Liberty) and Diamond State Insurance Company (hereinafter Diamond) insured the vehicle that was involved in the subject accident, the burden shifted to Liberty and Diamond to establish a lack of coverage or a timely and valid disclaimer of coverage (see *Matter of Progressive Northeastern Ins. Co. v Gibson*, 62 AD3d 804; *Matter of State Farm Mut. Auto. Ins. Co. v Mazyck*, 48 AD3d 580, 580-581; *Matter of Mercury Ins. Group v Ocana*, 46 AD3d 561, 562; *Matter of Allstate Ins. Co. v Berger*, 47 AD3d 708, 710; *Matter of Progressive Northwestern Ins. Co. v Galluzzo*, 16 AD3d 692, 693; *Matter of Eagle Ins. Co. v Rodriguez*, 15 AD3d 399, 400; *Eveready Ins. Co. v Blackett*, 148 AD2d 413, 414). Although Liberty came forward with rebuttal proof showing that its policy did not cover the vehicle, Integon presented additional proof of insurance which overcame the rebuttal proof (see *Matter of State Farm Mut. Auto. Ins. Co. v Yeglinski*, 79 AD2d 1029, 1030; *Matter of Travelers Indem. Co. v Machado*, 28 AD3d 569, 570-571; see also *Pierre v Providence Washington Ins. Co.*, 99 NY2d 222, 228-229; 49 CFR 387.15). Accordingly, the petition to permanently stay arbitration of the uninsured motorist claim was properly granted (see *Matter of State Farm Mut. Auto. Ins. Co. v Mazyck*, 48 AD3d at 580-581; *Matter of Allstate Ins. Co. v Berger*, 47 AD3d at 711; *Matter of Progressive Northwestern Ins. Co. v Galluzzo*, 16 AD3d at 693; *Matter of Eagle Ins. Co. v Rodriguez*, 15 AD3d at 400).

The appellants' remaining contentions are either not properly before this Court or without merit.

RIVERA, J.P., MILLER, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court