

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

D29431  
Y/hu

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Argued - November 22, 2010

PETER B. SKELOS, J.P.  
RANDALL T. ENG  
L. PRISCILLA HALL  
PLUMMER E. LOTT, JJ.

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2010-05986

DECISION & ORDER

In the Matter of Eveready Insurance Company,  
appellant, v Nicole Smith, et al., respondents.

(Index No. 17575/08)

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Teresa Girolamo (Sweetbaum & Sweetbaum, Lake Success, N.Y. [Marshall D. Sweetbaum], of counsel), for appellant.

Vincent D. McNamara, East Norwich, N.Y. (Michael S. Seltzer of counsel), for respondent New York Marine and General Casualty Company.

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration of a claim for uninsured motorist benefits, the petitioner appeals from an order of the Supreme Court, Suffolk County (Jones, Jr., J.), dated April 13, 2010, which, after a framed-issue hearing, denied the petition and dismissed the proceeding.

ORDERED that the order is affirmed, with costs.

On July 18, 2006, the respondents Nicole Smith, Heaven Purnell, and Brenda Rouse, allegedly sustained personal injuries as a result of a motor vehicle accident. They served a demand for arbitration on the petitioner, seeking uninsured motor vehicle benefits pursuant to a Supplementary Uninsured/Underinsured Motorists Endorsement. The petitioner filed the instant petition to permanently stay the arbitration, alleging that the “offending motor vehicle” was insured on the date of the accident, since New York Marine and General Insurance Company (hereinafter New York Marine), the insurer of the offending motor vehicle, did not file a notice of termination regarding the subject liability policy with the Commissioner of the Department of Motor Vehicles (hereinafter the Commissioner).

December 21, 2010

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Contrary to the petitioner's contention, New York Marine was not required to file a notice of termination with the Commissioner. According to the version of Vehicle and Traffic Law § 313(2) which was in effect on the date of the accident and at the time of the termination of the policy, an insurer was not required to file a notice of termination with the Commissioner due to a nonrenewal of a policy of liability insurance (*see* Vehicle and Traffic Law former § 313[2]; *see also* *Lloyd v Government Empls. Ins. Co.*, 204 AD2d 407). To the extent that regulation contained in 15 NYCRR 34.3(4) provides to the contrary, it is inconsistent with the legislative intent of the version of Vehicle and Traffic Law § 313(2) applicable to this case (*see Seittelman v Sabol*, 91 NY2d 618, 626-627; *cf. Raffellini v State Farm Mut. Auto. Ins. Co.*, 9 NY3d 196).

Accordingly, the Supreme Court properly denied the petition and dismissed the proceeding to permanently stay arbitration.

SKELOS, J.P., ENG, HALL and LOTT, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court