

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

D32443  
Y/prt

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

Argued - September 12, 2011

DANIEL D. ANGIOLILLO, J.P.  
L. PRISCILLA HALL  
JEFFREY A. COHEN  
ROBERT J. MILLER, JJ.

2010-10650

DECISION & ORDER

In the Matter of Auto One Insurance Company,  
petitioner-respondent, v Juan Lopez, et al., appellants;  
et al., proposed additional respondents-respondents.

(Index No. 12602/10)

Cannon & Acosta, LLP, Huntington Station, N.Y. (June Redeker and Gary Small of counsel), for appellants.

Picciano & Scahill, P.C., Westbury, N.Y. (Albert Galatan of counsel), for petitioner-respondent.

In a proceeding, inter alia, pursuant to CPLR article 75, to permanently stay arbitration of an uninsured motorist claim, Juan Lopez, Larry M. Aparicio, and Cruz Lopez-Guzman appeal from an order of the Supreme Court, Suffolk County (Whelan, J.), dated September 22, 2010, which granted the petition to the extent of temporarily staying the arbitration pending the joinder of certain additional respondents.

ORDERED that the order is affirmed, with costs.

CPLR 7503(c) requires that an application to stay arbitration be made within 20 days after service of a notice of intention to arbitrate (*see Matter of Fiveco, Inc. v Haber*, 11 NY3d 140, 144). “[T]he timeliness of a proceeding for a stay of arbitration is measured with respect to the earlier filing of the petition, not with respect to its later service” (*Matter of Government Empl. Ins. Co. v Morris*, 83 AD3d 709, 710; *see CPLR 304, 7502[a]*; *Matter of Mendon Ponds Neighborhood Assn. v Dehm*, 98 NY2d 745; *Matter of Scott v Allstate Ins. Co.*, 45 AD3d 690; *Matter of Allstate*

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*Indem. Co. v Martinezn*, 4 AD3d 422). Here, it uncontested that the appellants served their notice of intention to arbitrate on April 20, 2010. The petitioner submitted proof that the instant proceeding was commenced on May 3, 2010, by the filing of a petition. Accordingly, contrary to the appellants' contention, the action was commenced within the 20-day limitation period, and thus was timely.

The appellants' remaining contentions are either improperly raised for the first time on appeal (*see Jara v New York Racing Assn., Inc.*, 85 AD3d 1121; *Panteleon v Amaya*, 85 AD3d 993), or without merit.

ANGIOLILLO, J.P., HALL, COHEN and MILLER, 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