

<b>Matter of Allstate Ins. Co. v Rico</b>
2006 NY Slip Op 02989
Decided on April 20, 2006
Appellate Division, First Department
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Decided on April 20, 2006

Buckley, P.J., Marlow, Sullivan, Gonzalez, Sweeny, JJ.

8342N Index 1968/04

**[\*1]In re Allstate Insurance Company, Petitioner-Appellant,**

**v**

**Joshua Rico, Respondent, Edna Hanks Hargrove, Additional Respondent,  
Metropolitan Group Property & Casualty Company, Additional Respondent-  
Respondent.**

The Law Offices of Robert P. Macchia & Associates, Mineola  
(Sara A. Toler of counsel), for appellant.

Boeggeman, George, Hodges & Corde, P.C., White Plains (John

J. Walsh of counsel), for Metropolitan Group  
Property & Casualty Company, respondent.

Order and judgment (one paper), Supreme Court, Bronx County (Dianne T.

Renwick, J.), entered on or about July 21, 2005, which denied and dismissed the petition for a permanent stay of the uninsured motorist arbitration between petitioner and its insured respondent Joshua Rico, unanimously affirmed, with costs.

Supreme Court properly found the disclaimer of additional respondent Metropolitan Group Property & Casualty Company (Metropolitan) based on its insured's lack of cooperation effective, where the evidence showed that the insured and her husband made repeated misrepresentations to Metropolitan designed to hide the circumstance that the driver of the insured's vehicle at the time of the subject accident was the insured's husband, who was not then licensed to drive (*see Lewis v Nationwide Mut. Ins. Co.*, 202 AD2d 816 [1994]; *National Grange Mut. Ins. Co. v Olsen*, 30 AD2d 825 [1968]). Inasmuch as the identity of the driver of the vehicle could not be ascertained by Metropolitan for two years after the disclaimer, the failure to serve the driver with a separate disclaimer did not render the disclaimer ineffective (*cf. Matter of Eveready Ins. Co. v Dabach*, 176 AD2d 879 [1991]). [\*2]

We have considered petitioner's remaining contentions and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: APRIL 20, 2006

CLERK