

the collision was not a covered auto listed on the relevant policy schedule (the disclaimer letter). Over a year after receiving this letter, petitioner commenced the instant arbitration against respondent, pursuant to § 5105 of the Insurance Law, seeking subrogation reimbursement of its payment to its insured in connection with the collision. Respondents did not file the disclaimer letter in response. However, after an award was issued in petitioner's favor, respondent submitted a Post-Decision Inquiry with AFI, attaching the disclaimer letter.

This was in satisfaction of AFI rule 3-9, which provides that a responding insurance company may assert the coverage defenses of no liability policy in effect, denial of coverage up to 60 calendar days after the decision publication date and a minimum of 60 calendar days before the statute of limitations expires. The submission also rendered § 5105's mandatory arbitration provision inapplicable because respondent "in good faith assert[ed] a defense of lack of coverage" and "specific written consent of mandatory arbitration" was not obtained from respondent (Insurance Law [11 NYCRR] § 65-4.11[a][6]). Moreover, AFI rule 2-4 provides that "[i]f a denial/disclaimer of coverage is being pled . . . the party will be ruled out of jurisdiction so long as a copy of the denial/disclaimer of coverage letter to the party seeking liability coverage for the loss is submitted as evidence." Thus, the jurisdictional basis for the award issued by AFI in this loss transfer proceeding was vitiated upon respondent's submission of its Post-

Decision Inquiry attaching the disclaimer letter.

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

ENTERED: April 2, 2026

A handwritten signature in black ink, appearing to read "Susanna M. Rojas". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Susanna Molina Rojas
Clerk of the Court