New York Insurance Coverage Law Update

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Late Notice By Additional Insured Dooms Claim Despite Timely Notice By Named Insured

Eight months after being sued for an accident, an out-of-possession landlord provided notice of the suit to the insurance carrier that had issued a commercial general liability insurance policy to the tenant naming the landlord as an additional insured. Because the landlord had offered no excuse for the delay, the Appellate Division, First Department, found that it constituted late notice as a matter of law and held that the insurer was not required to demonstrate prejudice by reason of the delay to disclaim coverage. The appellate court also ruled that the tenant could not be deemed to have provided timely notice on behalf of the landlord because the landlord and tenant had adverse interests "from the moment the complaint was served naming them both as defendants." [*1700 Broadway Co. v. Greater N.Y. Mut. Ins. Co.*, 2008 NY Slip Op. 06881 (1st Dep't Sept. 16, 2008).]

Prompt Disclaimer Requirement Of Insurance Law § 3420(d) Does Not Apply to Title Insurance Dispute, Second Department Rules

After his claim under a title insurance policy was dismissed, the claimant appealed, asserting that the title insurer had failed to promptly disclaim coverage. The claimant premised his argument on case law discussing the prompt disclaimer requirement of Insurance Law § 3420(d). The Second Department found that the claimant's position was "without merit," explaining that the requirements of Insurance Law § 3420(d) were "expressly limited to claims for bodily injury or death arising out of accidents" and had "no application to other claims such as the title dispute in this case." [*Doyle v. Siddo*, 2008 NY Slip Op. 07207 (2d Dep't Sep. 30, 2008).]

Court Rejects Insurer's Contention That Alleged Middle School Fight Did Not Qualify As An "Occurrence"

A teacher's aide alleged that she had been injured when a fight broke out among eighth grade students and a boy threw a garbage can into the air that hit her. The aide sued the boy, whose parents sought coverage under their homeowner's policy. The insurer denied coverage on the basis that there was no "occurrence," which was defined in the policy as an accident. The court held that there was a duty to defend because the allegations in the complaint suggested the possibility of an "unintentional or unexpected event which potentially gives rise to a covered claim." [*Medrano v. State Farm Fire & Cas. Co.*, 2008 NY Slip Op. 06699 (2d Dep't Sep. 2, 2008).]

Court Finds No Uninsured Motorist Coverage Where Driver Intentionally Struck Someone With Car, But Holds That Other Coverage Is Available

After the driver of a car pleaded guilty to murder in the second degree, admitting that he intentionally had caused another person's death by striking him with an automobile, the automobile insurer argued that it was not obligated to provide coverage under the policy's uninsured motorist endorsement. The Second Department agreed, finding that, because no standard automobile liability policy would have provided coverage to the driver for the injuries he intentionally had inflicted, the insurer was not obligated to provide benefits under the uninsured motorist endorsement. The Second Department also found, however, that there was coverage under the policy's mandatory personal injury protection endorsement and its death, dismemberment, and loss of sight provisions because, from the victim's point of view, the incident that caused his injuries and death was certainly "unexpected, unusual and unforeseen," and was not the result of any "misconduct, provocation, or assault" on his part. [*State Farm Mut. Auto. Ins. Co. v. Langan*, 2008 NY Slip Op. 06980 (2d Dep't Sep. 16, 2008).]

"Staged Accident Defense" Permitted To Go To Trial Even Where Insurer Had Not Presented A "Strong Case" Of A Staged Accident

A medical service provider moved for summary judgment after showing that it had properly submitted bills to a No Fault insurer and that the insurer had failed to pay or deny the claim within 30 days. The court denied the motion, stating that although it did not believe that the insurer had presented a "strong case of a staged accident," it had presented "enough inconsistencies" to rise above the base level of "unsubstantiated hypothesis and suppositions" so as to permit this defense to go to trial. The evidence included statements of the assignors that, although unsworn and unsigned, were certified by a transcriber and the signed and sworn affidavit of a representative of the insurer's Special Investigations Unit that memorialized inconsistencies in the various assignors' statements, including the color and make of the car that was supposedly involved in the accident, different reasons why they were all together with the same driver, who was seated in the front of the car at the time of the accident and whether the car was stopped at the time of the accident. [*Manhattan Med. Imaging, P.C. v. State Farm Mut. Auto. Ins. Co.*, 2008 NY Slip Op. 51844(U) (N.Y. Civ. Ct. Sep. 4, 2008).]

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Naturally, the particular facts and circumstances of each claim will determine the impact of the cases discussed in this Update.