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KD Alert: New York's Highest Court Knocks Out Four Late-Disclaimer Rulings With One Decision

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On June 10, 2014, New York's Highest Court reinforced New York's long-standing rule that the timely disclaimer requirements of Insurance Law 3420(d) were only applicable in cases involving bodily injury and death. Remarkably, in issuing its decision, the Court of Appeals both reversed the lower court decision and abrogated three other contrary lower court decisions. In KeySpan Gas East Corp. v. Munich Reinsurance America, Inc., 2014 N.Y. Slip Op. 04113 (2104) the Court of Appeals reversed a First Department decision which had erroneously imposed on insurers a duty to disclaim coverage for property damage claims "as soon as possible" or risk waiver of the insurers' coverage defenses.

Specifically, the KeySpan case involved an action against three excess insurers for insurance coverage for underlying environmental claims. Upon receiving notice of the underlying claims, the three insurers reserved their rights to deny coverage on various grounds, including late notice of occurrence, pending an investigation. After several years of investigation and discovery, the insurers denied coverage based on late notice. The insured, KeySpan, argued that the disclaimers were untimely and the late notice defense was waived.

Both the trial court and the First Department held that KeySpan's notice of an occurrence was late as a matter of law, but the First Department denied summary judgment to the insurers because the insurers failed to disclaim "as soon as reasonably possible." Although the First Department did not reference Insurance Law 3420(d) in its decision, it is important to note that New York Courts only use the "as soon as reasonably possible" standard for evaluating the timeliness of a disclaimer when Insurance Law 3420(d) is at issue.

The applicability of Insurance Law 3420(d) for evaluating the timeliness of a disclaimer is of particular import because of the strict timeline imposed by Courts based on the statute. Specifically, there is New York case-law finding 3420(d) disclaimers invalid based on short delays without any showing of prejudice or intent. See, Hartford v. County of Nassau, 46 N.Y.2d 1028 (1979) (a 60-day delay was unreasonable as a matter of law); First Fin. Ins. Co. v. Jetco Constr. Corp., 1 NY3d 64 (2003) (48-day delay unreasonable); Sirius America Ins. Co. v. Vigo Construction Corp., 48 A.D.3d 450, 852 N.Y.S.2d 176 (2nd Dept. 2008) (34 days unreasonable). Alternatively, the common-law standard for determining the timeliness of a disclaimer for purposes of waiver requires an affirmative showing by the policyholder that the insurer "intentionally relinquished a known right" through that allegedly untimely disclaimer. Albert J. Schiff Associates Inc. v. Flack, 51 N.Y.2d 692, 698, 435 N.Y.S.2d 972, 417 N.E.2d 84 (1980).

In its decision, the Court of Appeals agreed with the insurers' arguments. The Court held that the First Department erred when it adopted the 3420(d) standard because by its terms, 3420(d) only applies to death or bodily injury claims and not to the property damage/environmental clean-up claims at issue in KeySpan. As a result of its holding, the Court of Appeals remitted the case to the First Department for a determination on the timing of the disclaimer using the common law standard.

Of particular interest in the KeySpan decision was the venture by the Court of Appeals beyond mere reversal of the First Department's decision in KeySpan, and holding that Estee Lauder Inc. v OneBeacon Insurance Group, LLC, 62 AD.3d 33 (1st Dept. 2009); Hotel des Artistes, Inc. v Gen. Accident Ins. Co. of Am., 9 AD3d 181 (1st Dept. 2004), lv dismissed 4 NY3d 739 (2004); and Malca Amit N.Y. v Excess Ins. Co., 258 AD2d 282 (1st Dept. 1999), "were wrongly decided and should not be followed" as those cases also applied the 3420(d) standard to non-bodily injury and death cases.

Obviously, the ruling in KeySpan was a significant victory for insurers because it rejected an unnecessarily stringent standard for timely disclaimers of coverage where such standard was inapplicable and, further, removed the teeth from the case-law that has been supporting policyholders' argument for the misreading of 3420(d) for a decade.

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