URB INSIDER

A Quarterly Publication of the Underwriters Rating Board

Around the Country Case Notes

March, 2010

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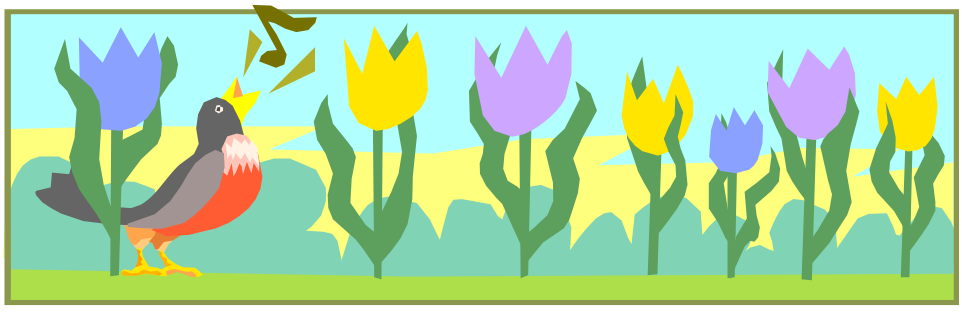
California—The use of the words "under God" in the Pledge of Allegiance and the use of "In God We Trust" on U.S. Currency were recently upheld by a federal appeals court in San Francisco. The court rejected the argument that these phrases violate the separation of church and state. This 9th U.S. Circuit Court of Appeals case rejected two legal challenges brought by Sacramento atheist Michael Newdow. Newdow previously brought a suit on this subject against his daughter's school in which the Supreme Court determined he lacked standing. Newdow, who is a lawyer, brings the current suit on behalf of other parents who share the same objection to the recitation of the Pledge by their children.

Massachusetts— The Supreme Judicial Court of Massachusetts upheld a state law requiring gun owners to lock weapons in their homes. The law requires guns to be kept in a locked container or equipped with a trigger lock when they are not under the owner's control. The Court determined that the legal obligation to safely secure firearms in the law was not unconstitutional. Gun rights advocates had argued this law infringes on the rights of gun owners who have a right to have access to guns to use them for self-defense.

Michigan—An appeals court in Michigan has ruled against a school district on behalf of a student who was bullied, reversing a prior decision from 2007. The district has been ordered to pay $800,000 for not doing enough to prevent the treatment the student received. The parents of the student sued the Hudson Area Schools, located near the Ohio border. The parents alleged that the student was the victim of bullying commencing in the sixth grade in 2002 and that by his freshman year, it became sexual assault. The district is planning to appeal the ruling.

Virginia—A federal appeals court in Richmond has reinstated the case of carnival operator Frank Sutton who sued for $2 million because his piece of chicken from McDonald's was too hot, and he burned himself. ♦



Index For This Issue

Case Notes	1
NY Cases	2-5
License Law	4
PA Case	5
Opinion of Counsel (NYSID)	6
Supp. to Circular Letter (NYSID)	7
Message from URB Services Corp.	8

Editor's Note: *The material contained in this publication is provided as information only, and is not intended to be construed or relied upon as legal advice in any manner. Always consult an attorney with the particular facts of a case before taking any action. The material contained in this publication was not necessarily prepared by an attorney admitted to practice in the jurisdiction of materials contained in the publication.*

NY Cases

Daughter Not Resident For Insurance

In a proceeding pursuant to CPLR article 75 to permanently stay arbitration of a claim for uninsured motorist benefits, the petitioner appeals from an order of the Supreme Court, Westchester County entered April 24, 2009, which, after a hearing, denied the petition.

The order is reversed, on the law and the facts, the petition is granted, and the arbitration is permanently stayed.

A person's status as a resident of an insured's household "requires something more than temporary or physical presence and requires at least some degree of permanence and intention to remain" (*Matter of State Farm Mut. Auto. Ins. Co. v Nicoletti*, 11 AD3d 702, 702 [internal quotation marks omitted]; *see Lindner v Wilkerson*, 2 AD3d 500, 501-502; *Fennell v New York Cent. Mut. Fire Ins. Co.*, 305 AD2d 452, 453; *Government Empls. Ins. Co. v Paolicelli*, 303 AD2d 633, 633; *Matter of New York Cent. Mut. Fire Ins. Co. v Bonilla*, 269 AD2d 599; *New York Cent. Mut. Fire Ins. Co. v Kowalski*, 195 AD2d 940, 941; *see also Matter of Aetna Cas. & Sur. Co. v Gutstein*, 80 NY2d 773, 775; *Matter of Aetna Cas. & Sur. Co. v Panetta*, 202 AD2d 662). The issue of residency is a question of fact to be determined at a hearing (*see Government Empls. Ins. Co. v Paolicelli*, 303 AD2d at 633; *Matter of American Natl. Prop. & Cas. Co. v Chulack*, 265 AD2d 550).

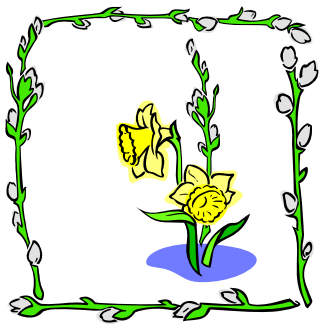
Based on the evidence presented here, the court disagrees with the hearing court's finding that the respondent resided in the household of the petitioner's named insured, the respondent's mother, at the time of the accident. At the framed-issue hearing, the respondent testified that she lived most of her life at her parents' residence in Yorktown Heights until she graduated from college in 2005. Shortly thereafter, in September of that year, she rented an apartment in Manhattan with two other people. Two months later, the respondent began employment in Manhattan where she worked five days a week, 11 to 12 hours a day. More than two years later, the respondent, after spending a Sunday afternoon with some friends near her hometown, was struck by a car while crossing Route 9A in Ardsley.

Although the respondent testified at the hearing that she visited her parents at the Yorktown residence at least once a month, "most often more," and that her parents maintained a room for her there where she kept some of her personal belongings, the respondent was emancipated from her parents, paid rent at the Manhattan residence, filed her own tax returns, and was no longer a dependent on her parents' tax returns.

Evidence that the respondent's driver's license still listed her parents' address as her home address, that she possessed a key to her parents' home and, in 2008, voted in Yorktown Heights, and that she previously opened a bank account at a Chase branch in Yorktown Heights, was insufficient to establish that the respondent was residing at the Yorktown residence of her parents at the time of the accident (*see Matter of Aetna Cas. & Sur. Co. v Gutstein*, 80 NY2d 773; *Matter of Aetna Cas. & Sur. Co. v Panetta*, 202 AD2d 662; *D'Amico v Pennsylvania Millers Mut. Ins. Co.*, 72 AD2d 783, *affd* 52 NY2d 1000; *cf. Dutkanych v United States Fid. & Guar. Co.*, 252 AD2d 537). Moreover, physical presence in the parents' home was insufficient to establish residency, particularly where, as here, the respondent had previously established another legal residence in Manhattan and signed a new one-year lease at that residence only two months before the accident (*see Hollander v Nationwide Mut. Ins. Co.*, 60 AD2d 380, 383; *Appleton v Merchants Mut. Ins. Co.*, 16 AD2d 361; *Allstate Ins. Co. v Jahrling*, 16 AD2d 501).

Based on the evidence presented, the respondent was not a covered person under the subject policy and, therefore, the petition to permanently stay the arbitration should have been granted.

The respondent's remaining contentions are without merit. *Matter of State Farm Mut. Auto. Ins. Co. v Bonifacio*, 2010 NY Slip Op 00523. ♦



Farmowners Agricultural Truck Loss Held Covered

This is an appeal from a judgment of the Supreme Court, Ontario County, entered March 3, 2009 in a personal injury action that directed defendant, Midrox Insurance Company to pay plaintiffs the sum of $1 million. The court ordered that the judgment appealed from is unanimously affirmed without costs.

Plaintiffs commenced this action seeking a determination that defendant Midrox Insurance Company (Midrox) was obligated under a farmowner's insurance policy issued to the remaining defendants, Ronald D. Blodgett and David J. Blodgett, doing business as the Blodgett Brothers Partnerships (hereafter, Blodgett defendants), to indemnify the Blodgett defendants in the underlying personal injury action and requesting judgment against Midrox in the amount of $1 million. In the underlying personal injury action, plaintiffs sought damages from the Blodgett defendants for injuries sustained by plaintiff Charles R. McLaughlin when the motorcycle he was operating collided with a pickup truck operated by Ronald Blodgett. Midrox disclaimed coverage for the accident on the ground that the accident occurred off the insured premises while Blodgett was operating a vehicle subject to motor vehicle registration. The underlying action ultimately settled, and judgment was entered against the Blodgett defendants in the amount of $1 million. Neither Midrox nor the Blodgett defendants, however, responded to plaintiffs' demand for payment pursuant to Insurance Law § 3420 (a) (2).

Plaintiffs moved for summary judgment on the complaint, and Midrox cross-moved for summary judgment dismissing the complaint on the ground that it properly disclaimed coverage. In appeal No. 1, Midrox appeals from an order granting plaintiffs' motion in part and denying its cross motion in its entirety. The court determined that the pickup truck was registered as an agricultural truck pursuant to Vehicle and Traffic Law § 401 (7) (E) (2) and was properly operated on public highways only for the purposes set forth in that subdivision (*see* § 401 [7] [E] [3]), but the court further determined that there was an issue of fact whether the accident occurred on insured premises. In appeal No. 2, Midrox appeals from a subsequent order pursuant to which the court determined following a hearing that the policy provides coverage for the accident and that Midrox shall pay plaintiffs the sum of $1 million. In appeal No. 2, Midrox appeals from the order rather than the subsequent judgment. The court exercises discretion to treat the notice of appeal as valid and deem the appeal as taken from the judgment (*see Hughes v Nussbaumer, Clarke & Velzy*, 140 AD2d 988; *see also* CPLR 5520 [c]). The order in appeal No. 1 is subsumed in the final judgment in appeal No. 2, and thus the appeal by Midrox from the order in appeal No. 1 must be dismissed (*see Hughes*, 140 AD2d 988; *Chase Manhattan Bank, N.A. v Roberts & Roberts*, 63 AD2d 566, 567; *see also* CPLR 5501 [a] [1]).

The appeals court concluded the court properly determined that the farmowner's policy provided coverage for the subject accident. The incidental liability provisions of the policy cover liability for bodily injury and property damage that "occurs on the *insured premises* and results from the ownership, maintenance, use, loading or unloading of . . . *motorized vehicles* not subject to *motor vehicle* registration because of their type or use . . . ." Pursuant to the policy, the "[i]nsured premises" include the Blodgett defendants' main farm as identified in the "Described Location" section as well as "any premises used . . . in connection with the described location," the approaches and access ways immediately adjoining the *insured premises*," and "other land [the insured] use[s] for *farming* purposes .. . ."

Midrox contends that its policy does not provide coverage because the accident occurred on a public roadway while Ronald Blodgett was driving a pickup truck. The court rejects that contention. In *Nationwide Mut. Ins. Co. v Erie & Niagara Ins. Assn.* (249 AD2d 898), the court interpreted a farmowner's insurance policy that was substantially similar, if not identical, to the Midrox policy. There, the insured's employee was involved in an accident on a public roadway while driving a pickup truck between two farms operated by the insured (*id.* at 898). The court further concluded that the various definitions of "insured premises" were "broad enough to include public roadways used by the insured to transport workers and materials between the insured's farms" (*id.*). Here, the record establishes that, at the time of the accident, Ronald Blodgett was driving the pickup truck between the Blodgett defendants' main farm and leased farm property, which were approximately nine miles from each other.

Continued Page 5 ⇨⇨

54-Day Disclaimer Too Long

In an action for a judgment declaring that the defendant Sirius America Insurance Company (Sirius) is obligated to defend and indemnify the plaintiff, Mid City Construction Co., Inc., (Mid-City) in an underlying action entitled *Levine v Colony Records & Radio Center, LLC,* pending in the Supreme Court, Kings County, that defendant appeals from a September 5, 2008 order which granted the motion of the defendant Finaly General Contracting Corp., a/k/a Finaly General Contractors, Inc., (Finaly) for summary judgment. The order is affirmed with costs and remitted to the Kings County Supreme Court for entry of a judgment that Sirius is obligated to defend and indemnify Finaly in the underlying action.

The defendant Finaly established its prima facie entitlement to judgment as a matter of law on its cross claim for declaratory relief against the defendant Sirius demonstrating that Sirius did not disclaim coverage "as soon as is reasonably possible" (Insurance Law § 3420[d][2]; *see Sirius Am. Ins. Co. v Vigo Constr. Corp.*, 48 AD3d 450, 452).

Finaly showed that Sirius had "sufficient knowledge of facts entitling it to disclaim" by June 10, 2005, at the latest, and that Sirius did not disclaim until August 3, 2005 (*see First Fin. Ins. Co. v Jetco Contr. Corp.,* 1 NY3d 64, 66).In opposition, Sirius failed to raise a triable issue of fact as to whether it sent an earlier disclaimer letter on June 21, 2005, by certified mail, return receipt requested (*see Rael Automatic Sprinkler Co., Inc. v Schaefer Agency,* 52 AD3d 670, 673). "Generally, proof that an item was properly mailed gives rise to a rebuttable presumption that the item was received by the addressee'" (*New York & Presbyt. Hosp. v Allstate Ins. Co.,* 29 AD3d 547, 547, quoting *Matter of Rodriguez v Wing,* 251 AD2d 335, 336). *York & Presbyt. Hosp. v Allstate Ins. Co.,* 29 AD3d 547, 547, quoting *Matter of Rodriguez v Wing,* 251 AD2d 335, 336). "The presumption may be created by either proof of actual mailing or proof of a standard office practice or procedure designed to ensure that items are properly addressed and mailed" (*Residential Holding Corp. v Scottsdale Ins. Co.,* 286 AD2d 679, 680). Sirius offered no evidence as to its standard office practices for mailing disclaimer letters, and the affidavit of a claims representative was insufficient to raise a triable issue of fact since he did not have personal knowledge of the mailing of the disclaimer letter (*see New York & Presbyt. Hosp. v Allstate Ins. Co.,* 29 AD3d at 547; *Tracy v William Penn Life Ins. Co. of N.Y.,* 234 AD2d 745, 748). The certified mail receipt, standing alone, was insufficient to raise a triable issue of fact as to actual mailing (*see New York & Presbyt. Hosp. v Allstate Ins. Co.,* 29 AD3d at 548; *Matter of State Farm Mut. Auto. Ins. Co.* [*Kankam*], 3 AD3d 418, 419; *cf. Westchester Med. Ctr. v Liberty Mut. Ins. Co.,* 40 AD3d 981, 983). Although issues of fact exist as to whether Finaly provided notice of an occurrence "as soon as practicable" (*M & N Mgt. Corp. v Nationwide Mut. Ins. Co.,* 307 AD2d 257, 258), Sirius's "failure to provide notice of disclaimer as soon as is reasonably possible precludes effective disclaimer, even where the insured's own notice of the incident is untimely" (*Tex Dev. Co. v Greenwich Ins. Co.,* 51 AD3d 775, 778; *see Osterreicher v Home Mut. Ins. Co. of Binghamton, N.Y.,* 272 AD2d 926, 927).

Sirius's contention that Finaly's motion was premature is without merit. Accordingly, the Supreme Court properly awarded summary judgment to Finaly on its cross claim against Sirius. The court remitted the declaratory judgment matter to Kings County Supreme Court for entry of a judgment. *Mid City Constr. Co. v Sirius Am. Ins. Co. et al.* , 2010 NY Slip Op 00935. ♦

Graduated Driver's License Law

New York's Graduated Driver's License Law took effect on February 22, 2010.

This law applies to drivers under the age of 18. The following changes will affect young drivers:

- Reduce from two to one the number of non-family passengers under age 21 riding in a motor vehicle operated by a junior license holder when not accompanied by a licensed parent or guardian.
- Elimination of the limited use junior license and require that a junior permit be held for at least 6 months before a junior or senior license may be issued.
- Increase the number of supervised driving hours before scheduling a road test from 20 to 50 hours, that includes 15 hours of driving after sunset.

Effective November 1, 2009, for all drivers it is illegal to text or use any portable electronic device while the vehicle is in motion.

For more information, go to:

www.nysdmv.com/youngdriver

In Pennsylvania

Concurrent Cause Exclusion Unenforceable

A concurrent cause exclusion was held to be unenforceable by the Pennsylvania Superior Court in the case of *Bishops, Inc. v. Penn National Ins.*, Case Nos. 2275 WDA 2007, 35 WDA 2008 (Pa. Super. Nov. 24, 2009). The Bishops sought coverage under their policy for damages to their business premises that were sustained from Hurricane Ivan and water damage. The water damage resulted when the sewer and drain back up followed by consequent flooding. The Bishops purchased an all-risk policy and a Penn Pac Endorsement that added $5,000 coverage for the back up of sewers and drains. The policy contained a concurrent-cause exclusion which excluded coverage for damage caused by water including flooding and water that backs up or overflows from a sewer or drain, regardless of any other cause or event that contributes concurrently or in any sequence to the loss." This language was not in the Penn Pac Endorsement.

Based on the concurrent cause exclusion, Penn National denied coverage to the Bishops for most of their claim. The Bishops responded that there was coverage pursuant to the Penn Pac Endorsement but Penn National didn't agree with their position.

The Bishops then filed a Declaratory Judgment action to determine their rights. They asserted that the Penn Pac Endorsement affirmatively granted them coverage and that the concurrent cause exclusion in the underlying policy was rendered unenforceable by the endorsement. The Bishops also asserted in a cross-motion that because the sewer and drain back up is a covered cause of loss, coverage was not limited to $5,000 but to the amount of Business Income and Extra Expense Coverage Form containing a $600,000 policy limit.

The trial court decided the Bishops were entitled to coverage under the Penn Pac Endorsement for $5,000 and the request for the additional coverage amount was denied.

On appeal, the Superior Court indicated that the concurrent cause exclusion and the Penn Pac Endorsement provisions are ambiguous when they are considered together, to the extent that they fail to provide a clear indication of the continuing role of the concurrent causation language" after adding the coverage endorsement. The Superior Court further held that because sewer and drain backup is a covered cause of loss, coverage is available under the Business Income and Extra Expense Coverage Form. ♦

Farmowner's Loss Continued

The court further rejects the contention of Midrox that this court's decision in *Nationwide Mut. Ins. Co.* does not apply because the pickup truck was registered as an agricultural truck (Vehicle and Traffic Law § 401 [7] [E]) rather than as a farm vehicle (§ 401 [13]). The Blodgett defendants had the option of registering the truck as either a farm vehicle or an agricultural truck, and the fact that they elected to register the truck as an agricultural vehicle does not, in the court's view, deprive them of coverage under the policy inasmuch as the pickup truck was used exclusively for farm purposes and the accident occurred along the the most direct route between the two farm parcels. Thus, the pickup truck was not subject to regular motor vehicle registration because of its exclusive use as a farm vehicle (*see Nationwide Mut. Ins. Co.*, 249 AD2d at 898).

There is likewise no merit to the contention of Midrox that the term "premises" within the meaning of the policy is not intended to encompass public roadways. That restrictive interpretation is not supported by the language of the policy, which neither defines "premises" nor excludes public roadways from its purview (*cf. Estate of Belmar v County of Onondaga*, 147 AD2d 900, *lv denied* 74 NY2d 612). Construing the policy in favor of the insureds and resolving all ambiguities in the insureds' favor, as the court must (*see United States Fid. & Guar. Co. v Annunziata*, 67 NY2d 229, 232), the court concludes that the accident occurred on the "insured premises" within the meaning of one or more of the policy's alternative definitions of that phrase (*see Nationwide Mut. Ins. Co.*, 249 AD2d at 898). *McLaughlin v Midrox Ins. Co.*, 2010 NY Slip Op 01260.♦

From The Department

OGC Op. No. 10-01-09

The Office of General Counsel issued the following opinion on January 28, 2010 representing the position of the New York State Insurance Department entitled "Re: Clarification of the term "personal injury as used in the amendments to N.Y. Ins. Law § 3420."

Question: Does the use of the term "personal injury" in N.Y. Ins. Law § 3420(a)(6) (McKinney Supp. 2009) include injury arising out of professional liability?

Answer: Yes. The term "personal injury" encompasses any injury contemplated as "personal injury liability" under Insurance Law § 1113(a)(13), including injury arising out of professional liability.

Facts: It is reported that a question has arisen as to whether the term "personal injury" in the 2008 amendments to Insurance Law § 3420 includes injury arising out of professional liability. XYZ Insurance ("XYZ") submitted a proposed policy endorsement for approval to the Insurance Department for a lawyers professional liability policy. The proposed endorsement does not contain the "notice" and "prejudice" requirements set forth in the 2008 amendments.[1] XYZ believes that Insurance Law § 3420(a) does not encompass professional liability insurance within the definition of "personal injury." The inquirer asks if XYZ is correct.

Analysis: Chapter 388 of the Laws of 2008, which amended Insurance Law § 3420, is relevant to the inquiry. Insurance Law § 3420(a)(6) establishes the right to bring a direct action against the insurer under certain circumstances, including a "claim arising out of death or personal injury to any person." The statute provides that each insurance policy must include:

A provision that, with respect to a claim arising out of death or personal injury of any person, if the insurer disclaims liability or denies coverage based upon the failure to provide timely notice, then the injured person or other claimant may maintain an action directly against such insurer, in which the sole question is the insurer's disclaimer or denial based on the failure to provide timely notice, unless within sixty days following such disclaimer or denial, the insured or the insurer: (A) initiates an action to declare the rights of the parties under the insurance policy; and (B) names the injured person or other claimant as a party to the action.

Chapter 388 also amended N.Y. Civil Practice Laws and Rules ("CPLR") § 3001 (McKinney Supp 2009) along similar lines.

The term "personal injury" did not appear in Insurance Law § 3420 before the 2008 amendments, save for the reference in Insurance Law § 3420(e) to "personal injury liability insurance." However, both prior to and after the 2008 amendments, Insurance Law § 3420(a) has used the term "liability for injury to person" to establish the minimum provisions applicable to liability policies generally. The Department's Office of General Counsel construes that phrase in tandem with Insurance Law § 1113(a)(13), which defines "personal injury liability insurance" as follows:

[I]nsurance against legal liability of the insured, and against loss, damage or expense incident to a claim of such liability (including the insurer's obligation to pay medical, hospital, surgical and disability benefits to injured persons, and funeral and death benefits to dependents, beneficiaries or personal representatives of persons who are killed, irrespective of legal liability of the insured), arising out of death or injury of any person, or arising out of injury to the economic interests of any person, as the result of negligence in rendering expert, fiduciary or professional service, but excluding any kind of insurance specified in paragraph fifteen except insurance to protect an insured against liability for indemnification or contribution to a third party held responsible for injury to the insured's employee arising out of and in the course of employment when such insurance is written pursuant to this paragraph and not written pursuant to paragraph fifteen of this subsection.

Thus, by its very terms, Insurance Law § 1113(a)(13) "personal injury" encompasses injury arising out of economic interests of any person "as a result of negligence in rendering expert, fiduciary or professional insurance..." It defies logic for the insurer to claim that the terms "personal injury" and "injury to person" are not embodied in the definition of "personal injury liability insurance" contained in Insurance Law § 1113(a)(13).

XYZ's assertion that the terms "personal injury" and "injury to person" should be read narrowly to include only bodily injury is belied by the legislative intent behind the use of those terms. When the Legislature intends a narrower scope than "personal injury," it clearly says so. For example, the term "bodily injury" is used in Insurance Law § 3420 as follows:

(d) If under a liability policy delivered or issued for delivery in this state, an insurer shall disclaim liability or deny coverage for death or bodily injury arising out of a motor vehicle accident or any other type of accident occurring within this state, it shall give written notice as soon as is reasonably possible of such disclaimer of liability of denial of coverage to the insured and the injured person or any other claimant.

(f)(1) No policy insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any natural person arising out of the ownership, maintenance and use of a motor vehicle by the insured...

The use of the term "bodily injury" in both of these sections of Insurance Law § 3420 refers exclusively to physical injury arising out of a motor vehicle accident, and not anything more, like psychological injury or loss of consortium. Thus, the Legislature has recognized a distinction between "bodily injury" and "personal injury" with the former being a subcategory of the latter. See also Gaouette v. Aetna Life Ins. Co. Of Hartford, Conn., 253 A.D. 388 (2nd Dept. 1938) (holding that an automobile liability policy's use of the term "personal injury" has a broader application than the term "bodily injury" contained in the same policy).

For further information, you may contact Associate Counsel Alexander Tisch at the New York City Office.

[1] The 2008 amendments to Insurance Law § 3420 require property/casualty insurers to include a provision in policies that late notice of claim, with certain exceptions, will not invalidate a claim unless notice has prejudiced the insurer. ♦

Supplement No. 1 to Circular Letter No. 20

Supplement No. 1 to Circular Letter No. 20 (2008) dated February 17, 2010 is reprinted below for your information.

TO: All insurers, reinsurers and insurance producers

RE: Contract certainty

STATUTORY REFERENCE: N.Y. Insurance Law §§ 107, 201, 301, 308, 1114, 2110, 2118, and 3103; and Arts. 23, 31, 34, 61, 63, 64, 65, 66, 67, and 69.

In October 2008, the New York State Insurance Department issued Circular Letter No. 20 ("CL No. 20"), which sets forth the Superintendent of Insurance's expectations regarding contract certainty with respect to property/casualty insurance policies and reinsurance contracts. The purpose of this Supplement is to provide further guidance in response to inquiries posed to the Department by various stakeholders – including insurers, producers, and trade associations – in the wake of the issuance of CL No. 20.

CL No. 20 advises insurers and producers doing business in the State of New York that they should, no more than twelve months from the date of that Circular Letter, develop and implement practices to assure that policy documentation is delivered to the insured before, at, or promptly after inception. "Promptly" is generally interpreted to mean within thirty business days (not, as some have queried, calendar days), and any extensions beyond that period should be carefully documented by insurers (and, wherever possible, establish "good cause" for such delay). CL No. 20 also states that any principles and practices established to ensure contract certainty must comply with all existing statutory or regulatory provisions concerning the content, timing, or delivery of insurance policies.

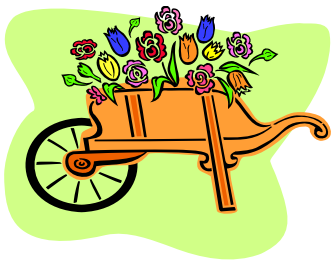
The Department received numerous inquiries about how it intends to ensure adherence to CL No. 20. On a prospective basis, the Department will focus its resources on those types of policies where, because of the unique nature or size of the risk, issues regarding contract certainty are most apt to surface. Such policies include those issued to: (1) large commercial insureds, written on a standard or manuscript basis; (2) the special risk market, written pursuant to Insurance Law Article 63; (3) policyholders in the excess line market; and (4) other insurers via reinsurance. In the latter half of 2010, the Department may issue letters of inquiry to licensees aimed at gathering information regarding how, and to what extent, licensees have developed and implemented practices to assure that contract certainty is routinely achieved. A number of queries centered on the policy documentation necessary for contract certainty. The Department has endeavored to develop a contract certainty standard that strikes an appropriate balance between insureds, on the one hand, and insurers and producers, on the other. To that end, the Department, mindful of the global nature of the insurance industry, refers insureds, insurers, and producers to the principles and standards of contract certainty established in the United Kingdom, http://www.abi.org.uk/information/business/521.pdf, and Bermuda, http://wwww.abir.bm/downloads/032208_ContractCertaintyCode of PracticeforBD FINAL.pdf. Those principles and standards will guide the Department to the extent that they are not inconsistent with the New York Insurance Law or regulations promulgated thereunder.

Thus, in accordance with those codes of practice, "policy documentation" for purposes of contract certainty should contain all the agreed terms of the contract, and may include an insurance policy, binder of insurance, schedule of cover*, signed contract wording, endorsement, or a complete slip. Similarly, documentation of a reinsurance contract can be evidenced by a binder, cover note, or similar documents, provided that it reflects all agreed terms and conditions to which the reinsurers have agreed.

Because CL No. 20 states that contract certainty generally should be achieved within thirty days, and given that insurers and producers must work together to best serve the insured, many licensees requested guidance as to how the time frame should be allocated In the United Kingdom, the allocation of time for placement of coverage is left to the marketplace. Accordingly, insurers and producers seeking to take steps to* consistent with CL No. 20 and this Supplement should work out the allocation amongst themselves. The Department believes that generally speaking, where a producer intermediates a transaction, the insurer should endeavor to deliver policy terms and conditions to the producer within eighteen business days post-inception to enable the producer to do its part to implement the processes necessary to check the terms and conditions for accuracy, advise the policyholder, and, where necessary, to interface further with the insurer to assure a final meeting of the minds. The broker then would generally have twelve business days to deliver the contract to the policyholder. But it bears emphasizing that in any given circumstance, it is incumbent upon the insurer and producer to decide between themselves how to allocate the time afforded by the thirty-day period. Note, however, that in all events, should the time frames suggested by CL No. 20 and this Supplement conflict with the some provision of the New York Insurance Law or regulations promulgated thereunder, the latter provision will control.

Please direct any questions regarding the content of this Supplement to James Everett at jeverett@ins.state.ny.us or (518) 408-1593.

Editor's Note: * Reprinted as in original document on Department website at www.ins.state.ny.us. ◆



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