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POLICYHOLDER INSURANCE COVERAGE E-UPDATE

CONSEQUENTIAL DAMAGES

Policyholders Can Now Recover for Damages Beyond Policy Limits Caused By Insurance Company's Breach of the Policy

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For years, New York courts have been predominantly pro-insurer, especially in disputes between the policyholder and insurer over the scope and availability of policy coverage. Consistently, courts limited the remedy available to policyholders who successfully sued for coverage to simply requiring the carrier to pay the amount due under the policy that it had previously refused to pay, without any other damage being assessed against the carrier for its conduct. However, as a result of a pair of landmark 2008 decisions by the New York Court of Appeals (NY's highest court), it's a whole new ball game for the policyholder in a coverage dispute with its carrier.

In two cases where the policyholder was suing for coverage under a property damage and business interruption policy, the New York Court of Appeals finally recognized the tremendous harm suffered by policyholders as a result of an insurer's bad faith in failing to properly investigate, adjust and pay claims in accordance with the applicable policies, thereby warranting an award above the policy proceeds.

In both cases, it was claimed that the insurance companies failed to timely investigate and pay the claims submitted by the policyholders, resulting in substantial damages, and, at least in one case, the complete cessation of business operations of the policyholder. As a result, the policyholders sought coverage not only for their direct damages (that is the amounts that were due but not paid under the policies), but

also for consequential damages (amounts in excess of the policy limits). In both cases the insurer claimed that the applicable insurance policies excluded consequential damages.

The Court of Appeals' recent decisions have demonstrated a step in the right direction towards appropriate protection of policyholders in coverage disputes. Significantly, it has opened the door for policyholders to finally recover the damages that adequately compensate them for their full, actual and foreseeable losses when their insurer refuses to honor its policy obligations. With the courts now willing and required, as a matter of law, to allow the recovery of consequential damages, there is more reason than ever to pursue coverage claims against your insurer.

Please feel free to call me or Mitchell Reiter with any questions or comments you may have.

Very truly yours,

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