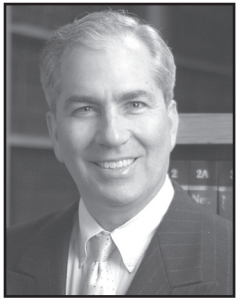


Protecting Your Insurance Protection!

CARRIERS MUST ACT TIMELY TO DISCLAIM COVERAGE

By Henry Goldberg, Esq and Mitchell B. Reiter, Esq. - Goldberg & Connolly



Most of the time it is the insured that has to timely comply with various notice requirements and other potential pitfalls to obtaining coverage under the insurance law in New York State. However, at least in one instance, the insurance company has a similar burden.

Under New York Insurance Law an insurance company must give written notice of a disclaimer of coverage “as soon as is reasonably possible.” Whether an insurance company’s disclaimer of coverage is timely is measured from the point in time when the carrier first learns of the grounds for its purported disclaimer of coverage. An insurance company’s failure to provide timely notice of its disclaimer of coverage is not excused by the insured’s failure to provide timely notice of the underlying occurrence.

This means that the insurance company must send you timely notice that it is not providing coverage because you did not notify them of the accident on time. If the insurance company does not, your late notice is excused. In a recent case, the Court of Appeals extended this logic to require the insurance company to timely disclaim coverage even if the insured does not submit the documents required to make a claim in the first place.

In this decision, the court decided that the insurance company’s notice of disclaimer was untimely even though the insured never completed and returned the forms required to submit a claim under the policy. In August 2002, the attorney for the insured sent a letter to the carrier to make a claim under the policy. In September 2002, the insurance company sent a letter back enclosing forms that it stated must be filled out

and returned immediately. This letter from the insurance company quoted the provisions of the policy that required that a written proof of claim and other particulars, made under oath, be submitted as soon as practicable after the insurance company’s request in order to submit a claim under the policy. The insured never submitted the required forms. Almost a year later, in June 2003, in response to the insured’s demand for arbitration, the insurance company sought to disclaim coverage based upon the insured’s failure to submit the required forms.



The insurance company (and two dissenting judges) contended that without the proof of claim form the insurance company could not decide if the claim was valid or not. Therefore, the company could not decide whether to disclaim coverage or not. In addition, without reviewing the statements in the proof of claim, the carrier argued it could not decide whether the required forms had been timely submitted.

The court disagreed and the majority of judges found this logic lacking. They found that the basis for disclaiming coverage was that the insurance company did not receive the completed forms on time. When the insured failed to immediately return the forms, the insurance company knew that this information was missing and should have disclaimed coverage immediately for that reason. Furthermore, the court felt that even though no specific deadline was set for the return of the forms or that the forms were never returned did not extend the insurance company’s time to disclaim coverage or excuse its delay in doing so.

G&C Commentary

This case illustrates how powerful a tool this issue can be for the insured. The insurance company must immediately inform the insured it does not have enough information to validate a claim or it cannot later refuse coverage because the information was never sent or sent too late.

Whenever an insurance company responds to a claim, it typically does so with a long letter purporting to raise any and all issues that might affect coverage and also states that it is reserving all of its rights. Included in this letter will also be all possible grounds for disclaiming coverage. It is recommended that this letter be reviewed by experienced counsel and that any purported basis for disclaiming coverage that was not timely raised be challenged.

It is not often that the insurance company has to face the same notice and timeliness obstacles as the insured. This is one well-defined instance where the insured has a significant weapon in its dealings with its carrier that must not be missed. ■

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