November 29, 2017

New York Court of Appeals Decision Clarifies Scope of N.Y. Ins. Law § 3420

New York once strictly enforced notice requirements in insurance policies, but the Legislature changed the law to require that a liability insurer must show prejudice in order to rely on a late-notice defense. Until recently, however, which policies were subject to that change and other aspects of N.Y. Ins. Law § 3420 was open to debate. On November 20, the New York Court of Appeals issued a decision, *Carlson v. American Int'l Group, Inc.*, 2017 N.Y. LEXIS 3280, 2017 N.Y. Slip Op. 08163 (N.Y. Nov. 20, 2017), clarifying that § 3420 applies broadly to all policies issued to risks and policyholders in New York. This decision will significantly affect, among other things, direct actions by injured parties against insurers, insurers' obligation to show prejudice to succeed on a late-notice defense and insurers' obligation to satisfy specific requirements when responding to bodily injury or death claims.

N.Y. Ins. Law § 3420 prescribes requirements for liability insurance policies "issued or delivered in [New York]." These requirements include, among other things, the following: (a) the bankruptcy or insolvency of the policyholder or his/her estate does not release an insurer from liability for injury or loss during the policy period; (b) an action may be brought directly against an insurer in certain, enumerated circumstances; (c) notice by the policyholder to any licensed agent of the insurer in New York constitutes notice to the insurer; (d) late notice will not invalidate a claim if it was not reasonably possible to give notice within the prescribed time and if notice was given as soon as reasonably possible thereafter; (e) late notice will not invalidate a claim unless the failure to provide timely notice prejudiced the insurer (except under a "claims made" policy); and (f) an insurer must respond to a claim of bodily injury or death within a specific time period and provide specific information. *See generally* N.Y. Ins. Law § 3420.

In 2008, apart from adding the prejudice requirement for a late-notice defense, the New York Legislature changed the wording that defines the scope of the statute's application. The previous version provided that § 3420 applied to any policy "issued for delivery" in New York. In *Preserver Insurance Company v. Ryba*, 10 N.Y.3d 635, 642 (2008), the New York Court of Appeals held that a "policy is 'issued for delivery' in New York if it covers both insureds and risks located in this state."

After the Legislature changed "issued for delivery" to "issued or delivered" in 2008, the effect of this alteration became the subject of litigation. Some litigants maintained that policies "issued or delivered" in New York encompassed only those policies that were issued from or transmitted to in-state addresses, whereas others contended that the phrase also included any policy that was issued or delivered out of state but for a policyholder and insured risk located in New York. In *Carlson v. AIG*, 130 A.D.3d 1477 (N.Y. App. Div. 4th Dep't 2015), the New York Appellate Division Fourth Department endorsed the narrower reading. After evaluating the new language, the Fourth Department held that the earlier *Preserver* standard no longer applied and § 3420 governed only policies that were actually issued or delivered in New York, irrespective of the location of the policyholder or the risk. Thus, under the Fourth Department's decision in *Carlson*, § 3420 and its requirements did not apply to a policy issued out of state and delivered to an out-of-state office of an insured or its broker, even though the policy covered risks or policyholders located in New York.

The plaintiff in *Carlson* appealed to the state's highest court, the New York Court of Appeals. On November 20, 2017, the Court of Appeals reversed and rejected the Fourth Department's narrow reading of the scope of § 3420. *See Carlson v. American Int'l Group, Inc.*, 2017 N.Y. LEXIS 3280, 2017 N.Y. Slip Op. 08163 (N.Y. Nov. 20, 2017). Holding that the change from "issued for delivery" to "issued or delivered" was a "stylistic change with no intended import," the court ruled that interpreting "issued or delivered" to include policies that cover both insureds and risks located in New York "is consistent with *Preserver* and the legislative history of section 3420 and the 2008 Amendments." *Id.* at *22. That legislative history,

according to the court, conveyed an "overall legislative intent of Insurance Law § 3420 [] to protect the tort victims of New York State, and the subsequent amendments to Section 3420 were designed to expand the remedy, not contract it." *Id.* at *20.

The New York Court of Appeals decision in *Carlson* is significant for insurers issuing policies that cover policyholders and risks located in New York, including corporate policyholders that operate in multiple states. Under New York law, policies covering risks and policyholders located in New York are now subject to § 3420 and its requirements, irrespective of where the insurer issued or delivered the policy. Thus, insurers will need to re-evaluate their exposures and rules applicable to the policies they have issued. Insurers will also need to show prejudice to succeed on a late-notice defense with respect to policies they may have believed were exempt from this requirement. Similarly, these insurers are subject to stricter response and denial requirements under § 3420. In conclusion, insurers would be well-advised to review closely § 3420 to determine whether it applies and how to satisfy it. As always, Day Pitney is ready to help clients to navigate these issues.

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