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ALERT

New York State Legislature and Governor Reform Late Notice Law

By Marshall Gilinsky

The New York legislature unanimously passed — and on July 23, 2008, Governor Paterson signed — an important insurance bill intended to correct a longstanding disadvantage for policyholders under New York law. This legislation, which amends Section 3420 of the New York Insurance Law, makes it much harder for insurance companies to deny coverage on grounds that a policyholder failed to provide timely notice of a claim. The new law establishes a “material prejudice” rule in connection with “late” notice under liability insurance policies other than claims-made policies.

Until now, New York courts have held that insurance companies were not required to demonstrate any harm in order to avoid their responsibilities under an insurance policy, and New York law stood nearly alone among its sister states in this draconian approach to late notice. The effect of this rule often eliminated insurance coverage for claims where notice was delayed for as little as a few weeks, even where the insurance companies suffered no prejudice as a result of the delayed notice.

The new law at last corrects this baleful approach to late notice, and includes several clauses that will benefit policyholders:

- **Claims Cannot Be Denied Based on Late Notice Unless the Insurance Company Suffered “Material Prejudice.”**
Section 3420(a)(5) provides that “failure to give any notice required to be given by such [liability insurance] policy within the time prescribed therein shall not invalidate any claim made by the insured, injured person or any other claimant, unless the failure to provide timely notice has prejudiced the insurer” Section 3420(c)(2)(C) specifies that an insurance company is not prejudiced “unless failure to timely provide notice materially impairs the ability of the insurer to investigate or defend the claim.”
- **Burden Is on the Insurance Company To Prove Prejudice for Claims Where Notice Was Late by Less Than Two Years.**
The amended statute places the burden on the insurance company

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to prove that it was prejudiced in cases where the notice was provided within two years of the time required under the policy. If the notice was provided more than two years after the time required under the policy, then the policyholder, injured person or other claimant has the burden to prove that the insurance company has not been prejudiced. In cases where notice is not given until after the policyholder's liability has been determined by a court, binding arbitration or settlement, however, there is an irrebuttable presumption that the insurance company was prejudiced.

Although this legislation does not resolve all of the legitimate grievances held by policyholders concerning New York insurance law, and applies only to insurance policies "issued or delivered in this state on or after" January 19, 2009, the reform of the prior "no-prejudice" rule represents a substantial improvement for policyholders under New York's late notice law. ▲

This new law which affects policyholders under New York law, will be discussed at **Anderson Kill's 11th Annual Policyholder Advisor Conference** being held on September 18, 2008, at the Flatotel in New York City.

Dennis Artese and **Darin McMullen** will be looking back over the last year on significant case law and will provide an update on the new laws and regulations that affect those states. This session on "Changes in the Law" will be held from 2:15 pm - 2:45 pm.

For more information about this complimentary conference:

Online <http://www.andersonkill.com/events.asp>

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