

New York Appellate Division Holds Four Month Delay To Disclaim By Excess Insurer Violates NYIL §3420(d)

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On January 17, 2012, the New York Appellate Division, First Department, overruled its own precedent by ruling that, in the context of bodily injury claims, insurance companies must notify policyholders “as soon as reasonably possible” when disclaiming coverage based on timeliness grounds, rather than delaying notice in order to investigate other possible grounds to disclaim coverage.

This decision reinforces the need for insurers to issue prompt disclaimers as soon as they become aware of a basis to disclaim.

In this decision, *George Campbell Painting v National Union Fire Ins. Co.*, the court held that where an insurer had sufficient information to disclaim coverage based upon late notice, a disclaimer issued on that ground nearly four months later did not comply with New York Insurance Law Section 3420(d) as a matter of law. That holding overrules a 2004 First Department case entitled *DiGuglielmo v. Travelers Property & Casualty*, in which that court had held that an insurance company could postpone denying a claim on timeliness grounds while it conducts further “investigation into other possible grounds for disclaimer” (“*DiGuglielmo* Rule”). In the *George Campbell Painting* decision, the court declined to follow, and expressly overruled, the *DiGuglielmo* Rule based on decisions of the Court of Appeals interpreting Section 3420(d) and the statute’s underlying policy considerations, which the court concluded were furthered by the *DiGuglielmo* Rule.

The *George Campbell Painting* decision reinforces the need for insurers to disclaim coverage promptly after learning grounds for same, rather than waiting to complete their investigation on each and every potential coverage issue. In reaching its holding, the court focused on the information within the insurer’s possession at the time of the initial notification, stating that, “[t]o be clear, not a single document or piece of information that [the insurer’s] letter referenced in setting forth its basis for disclaiming on late notice grounds came into [the insurer’s] possession after [the initial notification].”

In addition, the *George Campbell Painting* decision reinforces the need for excess/umbrella insurers to be mindful of their obligations under New York Insurance Law Section 3420(d). The insurer at issue in that decision was an excess insurer who, among other things, was investigating whether the putative additional insureds were in fact entitled to such status under the underlying primary policy. That excuse for the delay in sending the disclaimer was inadequate in the eyes of the court.

This decision reinforces the need for insurers to be diligent in reviewing claims and promptly responding to notifications, especially when they have grounds to disclaim coverage for a bodily injury claim