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Sharply Divided New York Court Of Appeals Expands Reach Of Insurance Law § 3420 By Broadly Interpreting Phrase "Issued Or Delivered" As It Appears In The Statute

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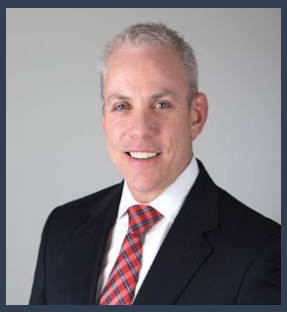

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On November 20, 2017, in a sharply divided four-to-three decision, the New York Court of Appeals held in Carlson v. American International Group, Inc., 2017 NY Slip Op. 08163 ("Carlson") that the phrase "issued or delivered" as it relates to insurance policies and Insurance Law § 3420 "encompasses situations where both insureds and risk are located in this state." The dissent was highly critical of the holding, arguing that "the majority misinterprets section 3420(a) in a manner that enacts sweeping change across the Insurance Law, generating substantial implications, both known and unknown", and that the holding "will surely wreak havoc beyond this case."

In Carlson, plaintiff in an underlying wrongful death action brought a direct action against certain insurers of DHL Worldwide Express, Inc. ("DHL"). One of the insurers argued that Insurance Law § 3420, which permits, among other things, a direct action in certain circumstances with respect to policies "issued or delivered" in New York, did not apply because its policy was issued to DHL's predecessor in Washington, and later to DHL in Florida. The majority rejected the insurer's argument, holding that "issued or delivered" should be broadly interpreted so that it "encompasses situations where both insureds and risks are located in this state." Under that interpretation, the statute applied because DHL was "located in" New York by virtue of its substantial business presence, and the underlying accident happened in New York.

The majority opinion relied heavily on the Court's decision in Preserver Insurance Co. v. Ryba, 10 N.Y.3d 635 (2008), where the Court interpreted the phrase "issued for delivery," which previously appeared in Insurance Law § 3420, as including "both insureds and risks located in the state." The dissent pointedly stated that the language in the current version of Insurance Law § 3420 is "issued or delivered", not "issued for delivery", and that those phrases do not have the same meaning. The dissent would have held the statute inapplicable so as to preclude the direct action by plaintiff.

In a separate holding, the Court adhered to its prior decisions that General Business Law § 349, which is directed to "deceptive acts or practices" that are "consumer oriented", does not "grant a private remedy for every improper or illegal business practice." The Court concluded that the statute did not apply to plaintiff's claims because they revealed "merely a 'private contract dispute over [insurance] policy coverage,' which does not 'affect the consuming public at large,'...."

We believe the Court's decision significantly expands the application of Insurance Law § 3420, and may be used by policyholders to argue that provisions like § 3420(d), which addresses the time within which disclaimers must be issued, applies in circumstances not previously thought to implicate the statute.

If you have any questions about the Court of Appeals' decision in Carlson, please contact Kevin E. Wolff or Justin N. Kinney.

KINNEY LISOVICZ REILLY & WOLFF PC

Kinney Lisovicz Reilly & Wolff PC represents clients in federal and state courts and handles an extensive variety of matters, including insurance coverage, civil litigation, premises liability, product liability, construction defect, food-borne illnesses, toxic exposure, contract and breach of contract, professional liability, employment litigation, auto and trucking, criminal defense, and appeals.

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