Case Alert

New York High Court: "Issued or Delivered" Includes Policies Insuring Risks in New York

On November 20th, the New York Court of Appeals reinstated a case seeking more than six million dollars in damages against the insurers for DHL Worldwide Express Inc. ("DHL"), originating from a fatal head-on car crash between Claudia Carlson and a truck owned by MVP Delivery and Logistics Inc. ("MVP"), a DHL contractor. The truck, which bore DHL's logo, was owned by MVP and driven by an MVP employee. The MVP employee was running an errand unrelated to his job at the time of the accident. Mrs. Carlson's husband sued the employee, DHL, and MVP. The jury award of $20 million was reduced to $7.3 million by the Appellate Division. MVP's insurer paid Mr. Carlson just over $1 million, and the employee assigned his rights to any other insurance coverage to Mr. Carlson.

Mr. Carlson sued DHL and its insurers, seeking the balance of the outstanding judgment pursuant to New York Insurance Law § 3420. The defendants successfully moved to dismiss Mr. Carlson's claims, which dismissal was affirmed by the Appellate Division on the basis that § 3420 did not apply since the policies in question were not "issued or delivered" in New York; they had been issued in New Jersey and delivered in Washington and Florida. The Court of Appeals was subsequently presented with two questions: (1) whether the DHL policies fell within the purview of Insurance Law § 3420 as policies "issued or delivered" in New York; and (2) whether MVP was an "insured" pursuant to the "hired auto" provisions of DHL's policies.

1. Issued or Delivered

New York Insurance Law § 3420 allows injured parties to bring an action directly against another party's insurers; however, the statute only applies to policies "issued or delivered in [New York]." The Appellate Division held that because DHL's policy was issued in New Jersey and delivered in Washington and Florida, Mr. Carlson could not recover against the insurer pursuant to Insurance law § 3420.

Writing for the majority, Justice Wilson wrote that "the meaning of 'issued or delivered' is informed by our decision in Preserver Ins. Co. v Ryba (10 NY3d 365 [2008]), and thus, § 3420 encompasses situations where both insureds and risks are located in this state." The opinion holds that under Preserver, "issued or delivered" means "where the risk to be insured was located -- not where the policy document itself was actually handed over or mailed to the insured."

The court noted the public policy behind this interpretation and the legislative intent behind § 3420 was to protect the tort victims in New York. Were the Court to interpret the section to apply exclusively to policies issued by an insurer located in New York or by an out-of-state insurer who mails a policy to a New York address, it would be contrary to the legislative intent of § 3420. Furthermore, restricting the application of § 3420 would permit insurers to avoid compliance with state law simply by mailing a policy to a location outside New York, even if the insured risk was located in New York. Accordingly, the Court concluded that Mr. Carlson could maintain his § 3420 claim.

The significance of this case cannot be overlooked since § 3420 contains many other requirements for insurers, including the obligation to prove prejudice when denying coverage based on untimely notice, deadlines to deny coverage, requirements for the content of reservation of rights and disclaimer letters, and possible preclusion of defenses not included in reservations of rights and disclaimer letters.

2. Hired Auto

DHL's primary policy provided "hired auto" coverage to DHL, its employees, and "[a]nyone else while using with your permission a covered 'auto' you own, hire, or borrow." The Appellate Division also dismissed Mr. Carlson's claims on the basis that the MVP truck was not a "hired auto" and MVP did not have DHL's permission to use it.

The Court of Appeals held that the dismissal was erroneous because the defendants and the Appellate Division relied only on the terms of the insurance policy and did not consider any extrinsic evidence, even though the defendants admitted that the policy's "Schedule of Hire" was not produced. Further, an expert opined that the Schedule of Hire would show that DHL's policies covered all of MVP's vehicles. Accordingly, the court held that the dismissal without this evidence was in error.

The defendants also argued that whether the truck constituted a hired auto was dependent on the level of control DHL exercised over MVP's trucks. The Appellate Division held that because the contract between DHL and MVP designated MVP as an independent contractor, DHL had no control over MVP. The Court of Appeals disagreed, holding that the contract was just one factor in a "control" analysis and there was evidence that DHL exercised substantial control over the operation of the truck.

The Court of Appeals also addressed the issue of whether the truck could be a hired auto on the basis that DHL granted MVP permission to use it. The term "permission" was not defined by the policy, but New York courts interpreting this term have held that the determination "turns not on whether the driver had permission to use the vehicle for the particular activity at issue, but on whether the driver had permission to use the vehicle at all." Here, DHL contracted with MVP for the operation of a fleet of vehicles to deliver DHL's packages, and it was inevitable that accidents would occur both during business routes and when a driver departed from those routes. The Court of Appeals therefore concluded that dismissal on the grounds that DHL did not grant permission to MVP was in error.

3. Conclusion

This decision is advantageous to policyholders and injured parties in New York who now receive the benefits and protections intended by the legislature. Not only will this protection apply with respect to policies written in or mailed to New York, but also to policies where the insured has a presence in New York and the insured risks are located in New York. Furthermore, the Court's holding that the interpretation of the policy's "hired auto" provision was an issue of fact allows injured parties the opportunity to prove their position and overcome a motion to dismiss.

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