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NEWS & EVENTS

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Stephen D. Straus and Andrew N. Adler Defeat Motion to Dismiss Complaint in Inter-Insurer Coverage Dispute

Related Attorneys: Stephen D. Straus

Traub Lieberman Straus & Shrewsberry LLP attorneys Stephen D. Straus and Andrew N. Adler recently convinced the Commercial Division of the Supreme Court of the State of New York, New York County, to establish new legal precedent interpreting certain statutory and case law precedent governing the timing of insurers' coverage disclaimers in direct contradiction to prior opinions of both that Court and a U.S. District Court.

TLSS represents the plaintiff, Old Republic Insurance Company ("Old Republic"), in a declaratory judgment action against the defendant, United National Insurance Company ("United"), seeking indemnification for sums Old Republic paid to settle an underlying tort action on behalf of its insured/subrogor. A pivotal issue in the coverage case is United's failure to promptly disclaim coverage to Old Republic's subrogor, leading to a forfeiture of United's coverage defenses under N.Y. Ins. Law §3420(d).

United moved to dismiss Old Republic's complaint, arguing that the prompt disclaimer statute does not apply to causes of action for contractual indemnification. United claimed support for this position in the case of *Preserver Ins. Co. v. Ryba*, 10 N.Y.3d 635 (2008) ("*Ryba*") from New York State's highest appellate court, the Court of Appeals. Although the *Ryba* decision does not expressly hold that the prompt disclaimer requirement does not apply to contractual indemnification claims, United relied on two recent trial court opinions that cited *Ryba* as so holding. *See Johnson v. Atl. Cas. Ins. Co.*, No. 13-1002S, 2015 U.S. Dist. LEXIS 111829 (W.D.N.Y. Aug. 24, 2015); *N.H. Ins. Co. v. JVA Indus. Inc.*, 57 Misc. 3d 1209(A) (N.Y. Sup. Ct. N.Y. Cnty. 2017).

In deciding United's motion to dismiss Old Republic's complaint, and United's subsequent motion to renew and reargue the denial of its initial motion, the Hon. Shirley Werner Kornreich agreed with Old Republic's position that *Ryba* did not establish or change the law regarding the timing of insurers' coverage disclaimers. The Court was thus unconstrained by adverse legal precedent and held that the prompt disclaimer requirement of N.Y. Ins. Law §3420(d) applies to contractual indemnification claims. *See Old Republic Ins. Co. v. United Nat'l Ins. Co.*, 2017 N.Y. slip op. 30789(U) (Sup. Ct. N.Y. Cnty., Comm. Div. Apr. 11, 2017), *on motion to renew & reargue*, 2018 N.Y. slip op. 30643(U) (Sup. Ct. N.Y. Cnty., Comm. Div. Apr. 9, 2018).

On behalf of Old Republic, TLSS advanced multiple arguments based upon a close reading of the *Ryba* decision, as well as the appellate briefs filed by the parties in *Ryba,* an interpretation of prior and later precedents, logic, and public policy underlying the relevant statutory provision. In a lengthy opinion, Justice Kornreich agreed with and adopted most of TLSS's arguments, including TLSS's critique of the *Johnson* and *JVA Industries* decisions relied upon by United. The Court's decision in the *Old Republic* case thus represents the lone precedent interpreting *Ryba* and holding that the prompt disclaimer requirement of N.Y. Ins. Law §3420(d) applies to claims alleging contractual indemnification.

Copies of the decision and the parties' briefs in the *Old Republic* case are available upon request.