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NY Statute Governing Liability Policies "Issued or Delivered" in NY Applied To NY Insureds and Risks Though Policy Issued and Delivered Outside NY

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The Court of Appeals of New York in *Carlson v. American Intl. Group, Inc.*, 2017 N.Y. LEXIS 3280, No. 47, (N.Y. Nov. 20, 2017) overturned the lower court's determination that N.Y. Insurance Law § 3420, governing certain liability insurance "issued or delivered" in New York and authorizing judgment creditors to sue the insurer to satisfy a covered judgment (among other things), did not apply to a policy issued to and received by the insured outside of New York. New York's high court held that the phrase "issued or delivered" in New York "encompasses situations where both insureds and risks are located" in New York, as found here, even if the policy was physically issued and delivered elsewhere.

This case addresses several issues bearing on whether the husband of a woman killed in a traffic accident in New York by the driver of a delivery van painted with DHL's logo (running a personal errand during a scheduled break at the time of the accident) could bring a direct action against DHL's liability insurers under N.Y. Insurance Law § 3420(a)(2) after securing a judgment against the van's owner and driver. As pertinent to this alert, the lower court held, among other things, that because the statute applies to policies "issued or delivered" in New York, it, therefore, did not apply to an excess policy that was issued in New Jersey, delivered to DHL's predecessor in Washington, and then later assumed by DHL, headquartered in Florida.

A majority of the Court of Appeals of New York viewed the lower court's interpretation of the phrase "issued or delivered in this state" as too restrictive, relying on *Preserver Ins. Co. v. Ryba*, 10 NY3d 635 (N.Y. 2008), which held that the phrase "issued for delivery in this state," as it formerly appeared in N.Y. Insurance Law § 3420(d) (requiring written notice in certain instances when an insurer disclaims liability or denies coverage for death or bodily injury), refers to "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 there] interpreted section 3420 to provide a benefit – deliberately in derogation of the common law – to New Yorkers whenever a policy covers 'insureds and risks located in this state'." Applying that standard to the facts at hand, the majority of the Court of Appeals reasoned that: "it is clear that DHL is 'located in' New York because it has a substantial business presence and creates risks in New York. It is even clearer that DHL purchased liability insurance covering vehicle-related risks arising from vehicles delivering its packages in New York, because its insurance agreements say so."

Additionally, the majority emphasized that its interpretation is consistent with the overall intent behind the statute's enactment "to protect the tort victims of New York State," which could otherwise be easily side-stepped. Unlike the lower court (and dissent), the majority did not find a meaningful difference between the "issued for delivery" language addressed in *Preserver* and the "issued or delivered in this state" language at issue, noting that

“[i]nterpreting ‘issued or delivered in this state’ 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 would undermine the legislative intent of Insurance Law § 3420. It would require an assumption that the legislature intended to remove coverage benefitting injured New York residents if the policy was mailed from another state, but to increase coverage for foreign victims injured elsewhere so long as the policy was mailed to New York or underwritten by a New York-based insurer – hardly plausible in light of the express purposes of section 3420 and the 2008 Amendments.”

Acknowledging that the phrase “issued or delivered in this state” appears in other parts of the Insurance Law, the majority stated: “we do not here purport to judge the meaning of the words ‘issued or delivered’ in any context other than section 3420. Identical words may be used in different contexts with different meanings and different legislative histories, and we do not foreclose any such interpretations by our decision here.”

In a dissenting opinion, Justice Garcia expressed support for the lower court’s arguably more literal interpretation of “issued or delivered in this state,” among other things, concluding that the phrases “issued or delivered” (as used in section 3420(a) at issue) and “delivered or issued for delivery” (as formerly used in section 3420(d)(2) and addressed in *Preserver*) are “two distinct phrases in the Insurance Law that, our cases make clear, have quite different meanings.”

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