



New York's Highest Court Holds that N.Y. Insurance Law § 3420 Extends to Certain Policies Issued and Delivered Outside New York

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On November 20, 2017, the New York Court of Appeals ruled in Carlson v. Am. Int'l Group, Inc., ___ N.Y.3d ___ 2017 NY Slip Op 08163 (Nov. 20, 2017) that New York Insurance Law § 3420 “applies to policies that cover insureds and risks located in the State [of New York]” – even if such policies were issued and delivered outside of the state. Sections 3420(a) and (b) allow certain direct causes of action by injured parties against insurers, but are limited by their text to policies and contracts “issued or delivered in this state.” In Carlson, however, the Court held that even though the subject policy was issued in New Jersey and delivered in Washington and Florida, it was subject to Section 3420(a) and (b) because the insured, DHL Worldwide Express, Inc. (“DHL”), has a substantial business presence and concomitant risks in New York, and is thus “located in” New York, and because the policy covered risks in New York.

The plaintiff in Carlson brought a direct action against DHL's carrier, American Alternative Insurance Co. ("AAIC"), under Section 3420(a)(2) and (b), to collect a \$7.3 million judgment it had obtained against DHL for fatal injuries sustained in an auto accident. AAIC argued that the Plaintiff could not bring a direct action against it because the policy was issued and delivered outside of New York. In rejecting AAIC's argument, the Court of Appeals held that applying Section 3420 to policies that cover insureds and risks located in New York was consistent with the reasoning behind the statute's enactment. The Court further noted that interpreting the phrase "issued or delivered" "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 is noteworthy that the provisions of Section 3420 that address policies "issued or delivered" in New York include the notice provisions in Section 3420(d)(2), which require carriers to issue prompt denials of coverage "for death or bodily injury arising out of a motor vehicle accident or any other type of accident occurring within" New York. It is also noteworthy that the Carlson Court applied New York substantive law to the policy without engaging in a choice of law analysis, despite the fact that the policy was issued and delivered outside the state of New York. As a result, insurers should be aware that Insurance Law § 3420, including the notice requirement on carriers, **may** apply to policies which cover risks and insureds located in New York, even if such policies are issued by an out-of-state carrier to an out-of-state insured.

Feel free to call any member of our team if you have questions concerning this case or its effect on your claims.

The decision is available for download [here](#).

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