

Timeliness of Disclaimer

Reasonable Belief in Nonliability

Timeliness of Disclaimer. In an action by insurer seeking a declaration that it owed no duty to insured apartment owner, First Department reverses order denying insurer's motion to dismiss insured's counterclaims. Court determines that the trial court erred in denying insurer's motion on the basis that insurer failed to support its motion with evidence in admissible form where insurer's claims handler submitted an affidavit based upon personal knowledge. Trial court also erred in finding insurer's disclaimer untimely as a matter of law where insurer disclaimed within 24 days of discovering that the insured's property manager knew of the underlying occurrence three years earlier. *Wassau Ins. Co. v. 3280 Broadway Realty Co. LLC*, 2008 WL 222403 (1st Dept. January 29, 2008).

Reasonable Belief in Nonliability. In an action by insurer seeking a declaration that it owed no duty to contractor in underlying personal injury action, First Department affirms order granting insurer's motion for summary judgment. Court holds that contractor failed to raise a triable issue of fact whether its belief in its nonliability was reasonable so as to excuse its nine-month delay in notifying insurer of the occurrence where contractor's foreman was notified of the injuries on the day they occurred and the injured worker appeared at the worksite shortly thereafter with his leg in a cast. *Tower Ins. Co. of New York v. Dyker Contractors, Inc.*, 2008 WL 191966 (1st Dept. January 24, 2008).