

Contribution & Indemnification. DECISION OF INTEREST. In a contribution action between two insurers that insured the same defendant in an underlying lead paint case, First Department affirms order that disclaiming insurer is obligated to pay a prorated portion of the settlement paid by the other insurer, notwithstanding the fact that neither policy covered certain periods of time at issue in the underlying claim. Court notes that cases applying time-on-the-risk proration cited by defendant insurer do not involve uninsured periods. Court holds that defendant insurer's unjustified disclaimer prevents it from challenging plaintiff insurer's payment of the settlement covering uninsured periods of time. A two-judge dissent finds that defendant insured should have no obligation to contribute to a settlement for uninsured periods of time. State of New York Insurance Department, Liquidation Bureau v. Generali Ins. Co., 2007 WL 2993807 (1st Dept. October 16, 2007).

Contribution & Defense Costs. DECISION OF INTEREST. In a contribution action between two insurers that insured the same defendant in an underlying lead paint case, First Department affirms order that disclaiming insurer is obligated to pay half of defense costs notwithstanding that its policy was on the risk for a shorter time than the insurer seeking contribution. State of New York Insurance Department, Liquidation Bureau v. Generali Ins. Co., 2007 WL 2993807 (1st Dept. October 16, 2007). Late Notice. DECISION OF INTEREST. In an assigned action seeking the amount of a verdict in an auto injury case against the underlying defendant's disclaiming insurer, Second Department affirms summary judgment in favor of the insurer. Court finds that although plaintiff provided notice to the insurer, the insured failed to provide notice, and since plaintiff stands in the shoes of the insured, the late notice defense applies to plaintiff's claim against the insurer. Zeldin v. Interboro Mut. Indem. Ins. Co., 2007 WL 2875194 (2d Dept. October 2, 2007). Broker E&O. Upon a motion for reconsideration, court affirms its decision that negligence and malpractice claims may proceed against a broker in a case where a marine property policy contained a "lay-up" warranty, which required the insured to decommission his boat at certain times during the year. Insured's boat was destroyed by fire during the lay-up period, but was not decommissioned. Court previously granted summary judgment upholding the disclaimer. Court, however, ruled that the negligence and malpractice claims against broker may proceed because New York's presumption that the insured read and understood the policy does not apply where there are allegations of wrongful conduct by the broker. Court finds an issue of fact based on documents procured by the broker stating that the policy provided year-round coverage. Cunningham v. Ins. Co. of North America, 2007 WL 2907346 (E.D.N.Y. September 28, 2007). Stay of Coverage Litigation. In complex coverage litigation involving coverage for contractual indemnification for underlying silica bodily injury claims, First Department affirms order denying stay of action in favor of near-simultaneously filed actions in Pennsylvania and West Virginia where the other actions were not as broad in scope, and where burden of proving forum non conveniens was not satisfied. However, court affirms stay of certain excess/umbrella claims already before a California court. ACE Fire Underwriters Ins. Co. v. ITT Industries, Inc., 2007 WL 2948428 (1st Dept. October 11, 2007). Material Misrepresentation & Disability Coverage. Insured under a disability policy brought suit challenging disability insurer's rescission of the policy based on insured's alleged misrepresentation of her medical history. Since policy was issued more than two years prior, court holds that insurer has burden of proving that insured's alleged misrepresentations were fraudulent. Court denies cross-motions for summary judgment, finding an issue of fact regarding whether insured knowingly falsified her application with the intent to defraud. Court also finds an issue of fact regarding whether insurer reasonably relied on the application where its own investigation revealed omissions in insured's medical history, but the insurer nonetheless issued the policy. Court also finds an issue of fact regarding whether insured was disabled under the policy. Despite evidence of insured's very active lifestyle, court notes that insured's claim is that she was disabled from her former job as an attorney due to cognitive deficiencies. Terry v. National Life Ins. Co., 2007 WL 2892632 (W.D.N.Y. September 28, 2007). Proof of Loss. In a first-party property damage dispute, court grants insurer's motion for summary judgment, upholding disclaimer based on insured's failure to provide a sworn proof of loss form. Court rejects insured's argument that providing a list of damages and attending an EUO constitutes substantial compliance with the requirement of providing a sworn proof of loss. Intelligent Financial Systems, Inc. v. National Grange Mut. Ins. Co., 2007 WL 2892022 (W.D.N.Y. September 27, 2007). Jeweler's Coverage. Insured made a claim for the value of jewelry stolen from a car occupied by an employee. Insurer denied coverage based on policy's lack of coverage for jewels lost in the possession of a commissioned salesman. Court finds the policy ambiguous with respect to the undefined term "commissioned salesmen," since policy does not indicate whether the term also includes employees receiving a minimum salary. Court denies insurer's motion for summary judgment. Alex & Alex Diamonds, Inc. v. Certain Underwriters at Lloyd's, London, 2007 WL 2844912 (S.D.N.Y. September 27, 2007). Agency Relations. First Department affirms dismissal of a claim for breach of the implied covenant of good faith and fair dealing where agent claimed insurer intentionally refused to provide him a quote for renewal group policies, and instead steered the business to a different broker. Court finds there was not a valid contract to support the claim. Court, however, reinstates actions for tortious interference with prospective business relations against the insurer and the other broker. A one-judge dissent would have reinstated the breach of good faith cause of action. Schorr v. The Guardian Life Ins. Co., 2007 WL 2829446 (1st Dept. October 2, 2007). Late Notice & Broker Liability. After insurer disclaimed coverage to the insured in connection with an underlying action, insured sued its broker for failing to forward notice to the insurer. Broker in turn filed a third-party action against a wholesale broker, alleging that wholesaler failed to forward notice to the insurer. Second Department affirms denial of wholesaler's motion for summary judgment. Court finds that presumption of receipt did not apply because retail broker used a partially incorrect address, but that since postal code was correct and notice was not returned to sender, an issue of fact exists. Geisco, LLC v. Greater New York Mut. Ins. Co., 2007 WL 2875992 (2d Dept. October 2, 2007).

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Contractual/Common Law Indemnification. In a Labor Law case, First Department holds that summary judgment was properly granted to owner against tenant where owner was not actively negligent. Summary judgment was properly denied on common-law indemnification claim since it was not established that tenant was actively negligent. *Rhodes-Evans v. 111 Chelsea LLC*, 2007 WL 2948397 (1st Dept. October 11, 2007). General Obligations Law § 5-322.1. In a coverage dispute in connection with an underlying Labor Law case, Second Department reverses summary judgment in favor of insured, and grants summary judgment in favor of insurer. Court holds disclaimer was properly predicated on an endorsement that required the insured to enter into a hold harmless agreement with its subcontractors. Court holds that the fact that such an agreement might have violated General Obligations Law § 5-322.1 is immaterial to the issue of coverage. *Wilson v. Sirius America Ins. Co.*, 2007 WL 2949307 (2d Dept. October 9, 2007). First-Party No-Fault & Intoxication Defense. Second Department affirms denial of provider's motion for summary judgment where insurer denied claim based on insured's intoxication at the time of the accident. Court observes that 30-day period to pay or deny a claim is extended where intoxication is the defense. However, court vacates summary judgment in favor of insurer, finding that insurer did not lay a foundation for the admission of a blood alcohol report, and did not prove that insured's intoxication was the proximate cause of the accident. *Westchester Medical Center v. State Farm Mut. Auto. Ins. Co.*, 2007 WL 2949311 (2d Dept. October 9, 2007). First-Party No-Fault & Tolling. Second Department reverses that part of order granting provider summary judgment, finding that insurer's requests for verification tolled its time to pay or deny the claim until it received all of the relevant information requested. *New York Presbyterian Hosp. V. Countrywide Ins. Co.*, 2007 WL 2954869 (2d Dept. October 9, 2007).