

Relation of Earnings to Insurance Clause &ndash; Insurance Law § 3216. DECISION OF INTEREST. In action by insured against insurer surrounding a disability income insurance policy, Court of Appeals holds that the placement of a &ldquo;Relation of Earnings to Insurance&rdquo; (REI) clause within the &ldquo;General Provisions&rdquo; of the policy is permissible under Insurance Law § 3216. Insured brought action against insurer after insurer paid insured less than the total disability benefit based upon policy&rsquo;s REI clause calling for a benefits reduction where the total disability benefit exceeded the insured&rsquo;s monthly income at the time of disability. Court of Appeals rejects insured&rsquo;s contention that Insurance Law § 3216 required that the REI clause be located in the policy together with the total disability benefit rather than among the policy&rsquo;s general terms and provisions. Subsection (d) expressly excepts the REI clause from the location requirements of Insurance Law § 3216(c)(7). *Friedman v. Connecticut General Life Ins. Co.*, 2007 WL 3022869 (October 18, 2007).

First-Party No-Fault. DECISION OF INTEREST. In a claim for no-fault benefits, First Department holds that insurer&rsquo;s &ldquo;low impact&rdquo; study was insufficient basis to deny provider&rsquo;s motion for summary. Court holds that insurer&rsquo;s study did not support its defense that the injuries did not arise out of the accident because the study was not conducted in connection with a review of assignor&rsquo;s actual injuries. Court rejects the opinion of one concurring judge that the defense that injuries were not related to the accident, which is not subject to a 30-day period for denying the claim, is a &ldquo;coverage defense&rdquo; only in situations where the injuries predate the accident at issue. *Bronx Radiology, P.C. v. New York Central Mut. Fire Ins. Co.*, 2007 WL 3025707 (1st Dept. October 12, 2007). Broker E&O. Court denies broker&rsquo;s motion for summary judgment in case where insured claims broker was negligent in not ensuring that a request to amend the insured location under the policy was properly issued. Broker forwarded the request, but insurer only changed the policy address, rather than the schedule of insured locations. Court rejects broker&rsquo;s argument that it could not be negligent based on insured&rsquo;s subsequent receipt of policy documents. However, court finds an issue of fact regarding broker&rsquo;s alleged negligence, and denies insured&rsquo;s cross-motion. With respect to insured&rsquo;s claim against the insurer, court cites Insurance Law § 3420(d) to find an issue of fact regarding whether insurer issued a timely disclaimer (although claim involves property damage rather than bodily injury). Court also denies insured&rsquo;s motion for summary judgment that insurer is precluded from disclaiming coverage as a matter of estoppel. *Sanidown Inc. v. Fireman&rsquo;s Fund Ins. Co.*, 2007 WL 3072458 (Sup. Ct. Kings Co. October 11, 2007). Broker E&O. First Department grants partial summary judgment in favor of broker, finding that claims against the broker arising out of a one particular policy issued by co-defendant insurer are barred because insured&rsquo;s arguments for coverage under the policy based on the number of occurrences were rejected in a previous related action. *Lavandier v. Landmark Ins. Co.*, 2007 WL 3025500 (1st Dept. October 18, 2007). UM Arbitration &ndash; Definition of Uninsured Motorist. In an action by insurer to stay insured&rsquo;s demand for UM benefits where tortfeasor&rsquo;s policy limits were exhausted by multiple claims, Supreme Court denies insurer&rsquo;s petition and holds that New York Insurance Department Regulation 35-D provides that an uninsured motor vehicle includes a vehicle for which there is bodily injury liability insurance coverage applicable at the time of the accident, but the amount of the insurance coverage has been reduced by payments to other persons injured in the accident to an amount less than the third party bodily injury liability limits of the insured&rsquo;s policy. *Allstate Ins. Co. v. Dawkins*, 2007 WL 3072649 (Sup. Ct., Queens Co. October 23, 2007). First-Party No-Fault. In an action to recover no-fault medical payments, court modifies order to deny cross-motions for summary judgment where provider&rsquo;s motion was supported by a corporate officer&rsquo;s affidavit that did not reflect personal knowledge, and insurer&rsquo;s papers submitted in support of its cross-motion left questions of fact regarding office mailing procedures and whether insurer timely mailed verification requests. *Allstate Social Work and Psychological Services, P.L.L.C. v. Utica Mut. Ins. Co.*, 2007 WL 3071190 (Sup. Ct., App. Term October 19, 2007). First-Party No-Fault &ndash; Insured Incident. In an action to recover no-fault medical payments, court reverses order to deny provider&rsquo;s motion for summary judgment where affidavit of investigator submitted by insurer was sufficient to demonstrate a founded belief that the alleged injuries did not arise out of an insured incident. Provider was not entitled to summary judgment where triable issue of fact existed as to whether there was a lack of coverage. *Rockaway Medical & Diagnostic, P.C. v. State Farm Mut. Ins. Co.*, 2007 WL 3071198 (Sup. Ct., App. Term October 19, 2007).