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## Week of September 5

**Duty to Defend - D&O.** Court grants partial summary judgment to D&O insurer in a dispute over duty to defend various entities sued for allegedly causing an investor to make inappropriate market trades in order to capture commissions. Court finds that complaint alleges "wrongful acts" under policy and that exclusion for services for compensation does not apply to a defendant officer under the exclusion's management carveback provision. Court, however, finds that exclusion does apply to an individual defendant who is not an officer. *Carlin Equities Corp. v. Houston Cas. Co.*, 2007 WL 2456958 (S.D.N.Y. August 24, 2007).

**Defense Counsel Malpractice.** Following settlement of an auto injury case, manufacturer's insurer (as subrogee) sued car owner for common law indemnification. Driver's insurer contributed its \$100,000 limits, but manufacturer's insurer paid \$5.9 million of settlement. Driver then brought third-party malpractice action against defense counsel retained by primary insurer. Driver claimed defense counsel caused his loss by failing to request a waiver of indemnification by the manufacturer's insurers as a condition of settlement. Court grants summary judgment to the law firm, observing that driver had no right to condition settlement on such a waiver, other insurers were not obligated to give it, and that insurer's consideration of the post-settlement request for a waiver was based on the same criteria it would have considered if a pre-settlement request were made. *Tokio Marine and Fire Ins. Co., Ltd. V. Grodin*, 2007 WL 2435152 (S.D.N.Y. August 29, 2007).

**Contractual Limitations Period.** In an action by insured against insurer seeking a loss of rent claim and a mold remediation claim after a steam riser broke, First Department reverses order denying insurer's motion to dismiss the complaint as time-barred pursuant to a policy provision requiring that any legal action for coverage be brought within two years of the date the loss or damage occurred. Court holds that the limitations period began to run on the date the steam riser broke, not the date on which mold tests first disclosed dangerous levels of contamination. Court further rejects insured's argument that the date-of-discovery rule applied where insured failed to demonstrate that an earlier inspection, diligently undertaken, would not have revealed the cause of the loss. *Lichter Real Estate Number Three, L.L.C. v. Greater New York Ins. Co.*, 2007 WL 2445131 (1st Dept. August 30, 2007).

**Repair Costs - NYCRR § 216.7(b).** In an action by insured to recover damages to his Mercedes after it was involved in an accident, court determines that the insured was not entitled to recover repair costs for labor rates charged by Mercedes-Benz certified mechanic that exceeded those labor rates approved by the insurer. In analyzing the insurer's duty to negotiate in good faith pursuant to NYCRR § 216.7(b), the court concludes that New York case law favors a case-by-case analysis of whether insurer should be liable for the difference in costs between the recommended repair shop and the shop chosen by the insured. The insured failed to meet his burden where he offered conclusory statements that the repair involved electronic complexity and a need for specialized equipment that were unsupported by specific testimony. *Randolph v. Liberty Mut. Ins. Co.*, 2007 WL 2429496 (Dist. Ct. Nassau Co. August 28, 2007).