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Insurance—Failure of Proper Notice to Insurer

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INSURANCE

Failure Of Proper Notice To Insurer

In *Deso v. London and Lancashire Indem. Co. of America,*[1] a tenant brought an action, pursuant to section 167 of the New York Insurance Law, against landlord's insurer to recover the amount of a judgment which said tenant had secured against the landlord in a personal injury action. In defense of this action the insurance company maintained that the insured had failed to notify the insurance company until 51 days after he learned of the injury, and therefore had not fulfilled the requirement of the insurance policy that on the happening of an occurrence insured must give written notice to insurer as soon as practicable. This Court, reversing the lower courts,[2] held that the tenant's recovery against the insurance company was barred in that the insured as a matter of law had failed to comply with the terms of the liability policy.

It is well settled in this jurisdiction that failure to satisfy the requirements of an insurance policy, which provides on the happening of an occurrence written notice shall be given to the insurer as soon as practicable, relieves the insurer of liability.[3] The term "as soon as practicable" will be construed to mean within a reasonable time under all circumstances.[4] In the absence of an excuse or other mitigating circumstances, the question as to whether the timeliness of the notice given was reasonable under the circumstances, so as to satisfy the requirement, is a matter of law to be ascertained by the Court.[5] Where mitigating circumstances are offered as an excuse, the question as to whether the notice was given in a reasonable time, becomes a question of fact to be decided by the jury.[6] In the instant case the Court held that in the absence of mitigating circumstances the lapse of 51 days, between the time the insured learned of the injury and when he notified the insurer, constitutes a failure to fulfill this condition as a matter of law.

It is apparent that since the policy required written notice as soon as practicable and no excuse was offered, the majority was correct in finding that 51 days was unreasonable as a matter of law. The position taken by the dissent, that it should be a question for the jury regardless of whether mitigating circumstances are offered, seems to be unsupported by the decisions in this state.[7]

1. 3 N.Y.2d 127, 164 N.Y.S.2d 689 (1957).
2. 2 A.D.2d 385, 157 N.Y.S.2d 682 (3rd Dep't 1956).
3. Coleman v. New Amsterdam Casualty Co., 247 N.Y. 271, 160 N.E. 367 (1928).
4. Vanderbilt v. Indemnity Ins. Co. of North America, 265 App. Div. 495, 39 N.Y.S.2d 808 (2d Dep't 1943).
5. Rushing v. Commercial Casualty Ins. Co., 251 N.Y. 302, 167 N.E. 450 (1929).
6. Gluck v. London and Lancashire Indem. Co., 2 N.Y.2d 953, 162 N.Y.S.2d 357 (1957).
7. Melcher v. Ocean Acc. and Guar. Corp., 226 N.Y. 51, 123 N.E. 81 (1919); Bazar v. Great Amer. Indem. Co., 306 N.Y. 481, 119 N.E.2d 346 (1954).