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Federal Court Finds Disclaimer Based on Employee Exclusion Issued After Three and Half Month Investigation to Be Timely

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In the recent case of *Penn-Star Ins. Co. v. Speedo Corp.*, No. 21-CV-04694 (HG) (MMH), 2024 U.S. Dist. LEXIS 177679 (E.D.N.Y. Sep. 30, 2024), the United States District Court for the Eastern District of New York had occasion to examine the timeliness of a coverage disclaimer issued three and a half months after notice of the claim. New York Insurance Law 3420(d)(2) requires that—in cases involving bodily injury occurring in New York—a denial based on an exclusion or condition be issued “as soon as practicable,” which has been judicially interpreted to mean as little as thirty days from the time that the carrier learns of the basis for denial. The penalty for not doing so is statutory estoppel of the right to rely on the exclusion or condition.

In *Speedo*, the carrier, Penn-Star, investigated the potential application of an employee liability exclusion after learning of a workplace accident. A notice of claim was provided to Penn-Star on January 25, 2021. The day after, Penn-Star’s investigator spoke to the insured, Speedo, which initially informed Penn-Star that the claimant was not employed by Speedo. After, Penn-Star’s adjuster tried four times to speak with Speedo, and nine times to speak with the claimant’s counsel. It was not until May 3, 2021, when the New York City Housing Authority, the owner of the subject building, provided Penn-Star with testimony suggesting that Speedo was the employer, that Penn-Star could conclude that Speedo was the employer and that employee exclusion could apply. On May 14, 2021, Speedo’s worker’s compensation carrier then sent Penn-Star a letter identifying Speedo as the claimant’s employer. On June 1, 2021, Penn-Star sent a disclaimer letter.

The court detailed this course of action and found that Penn-Star took prompt steps to secure more information about the employment relationship relevant to the disclaimer, and did not violate Insurance Law 3420(d)(2). The court specifically held that it did not “read Insurance Law 3420(d) . . . to require an insurer to perform extensive investigation when key sources of information are proving non-cooperative.” As such, the disclaimer was held to be timely and the court found that Penn-Star had no duty to defend or indemnify in the underlying action.

The *Speedo* case provides an insurer “playbook” when dealing with uncooperative insureds and investigating the applicability of potentially relevant exclusions. Diligent and repeated follow ups, followed by a timely denial when information is provided, will avoid the draconian penalties of Insurance Law 3420(d)(2).