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Client Alert

NEW YORK'S HIGHEST COURT RULES THAT INSURANCE COMPANIES MAY BE LIABLE FOR EXTRA-CONTRACTUAL DAMAGES FOR FAILURE TO PAY INSURANCE BENEFITS

On February 19, 2008, in two cases that are likely to have far reaching implications for both insurers and insureds, the New York Court of Appeals (the state's highest court), issued a landmark decision in *Bi-Economy Market, Inc. v. Harleysville Insurance Company* and *Panasia Estates, Inc. v. Hudson Insurance Company*, holding that an insurance carrier which wrongfully delays payment or denies coverage to its insured may be liable for consequential damages or other extra-contractual damages suffered by the insured, even if those damages exceed the coverage limits of the policy.

In both cases, the plaintiffs filed suit against their commercial property insurer alleging that the insurer breached the implied covenants of good faith and fair dealing in the insurance contracts by failing to pay or timely pay the plaintiffs' insurance claims. *Bi-Economy* arose out of a fire that destroyed the Bi-Economy Market, a wholesale and retail meat market in Rochester, New York. Bi-Economy alleged that its insurer delayed payment under the policy and then made unreasonably low offers to settle the fire loss claims, which ultimately drove the company out of business. Bi-Economy sued to recover consequential damages for the loss of its business. In *Panasia*, Panasia Estates, a commercial property owner in Manhattan, filed a claim with its commercial property and builder's risk insurance carrier for extensive damages that the building sustained when water from a rainstorm infiltrated the building while it was under construction. Alleging that the insurer unreasonably delayed adjusting the claim and then wrongfully denied coverage, Panasia sued the insurer for not only the direct loss caused by the rainwater, but also for lost rents, interest on money borrowed to perform the repairs, and other consequential costs it incurred.

In permitting claims for consequential damages against insurance companies, the Court of Appeals relied upon the fundamental purpose of contract damages – to place the non-breaching party in as good a position as it would have been had the contract been performed. Accordingly, the Court held that when an insured suffers additional damages as a result of an insurer's excessive delay or improper denial, the insurance company should stand liable for these damages; for implicit in all insurance contracts is a covenant that the insurer will investigate in good faith and pay covered claims. Unlike other agreements, insurance policies are not obtained for commercial advantage, but rather for protection against calamity, and to provide security and peace of mind in the event a loss occurs. Thus, "limiting an insured's damages to the amount of the policy, i.e., money which should have been paid by the insurer in the first place, plus interest, does not place the insured in the position it would have been in had the contract been performed." Its decision, said the Court, was not for the purpose of punishing the insurer, but merely to give the insured its bargained-for-benefit.

If you have any questions, please contact Michael Zicherman at mzicherman@pecklaw.com or 201.343.3434

[1] Michael S. Zicherman, Esq., a partner in Peckar & Abramson's New Jersey office, successfully argued the *Panasia* case before the Court of Appeals.