NYSBA FALL 2018 | VOL. 43 | NO. 1

Deconstruction

A publication of the Construction & Surety Law Division of the Torts, Insurance and Compensation Law Section of the New York State Bar Association

www.nysba.org/Deconstruction

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Summary of Decisions and Statutes

CONTRACTOR LICENSING REQUIREMENTS

43-1. In this case, the defendant-homeowners moved to dismiss an action by the plaintiff-contractor on the ground that the contractor had no home improvement license. While the law is well settled that a home improvement contractor may not recover in the absence of a home improvement license, the circumstances in this case were unique because the contractor had a license when it contracted and began performing the work. However, the license lapsed before the job was completed. The court found that compensation for the portion of the work performed when the contractor's license was current was recoverable but that the contractor forfeited compensation for any work it performed after the license had lapsed. *Hamptons Landscaping Serv., Inc. v. Sherman*, 58 Misc. 3d 228, 66 N.Y.S.3d 98 (Suffolk Co. Ct. 2017).

CONTRACTUAL CONDITIONS PRECEDENT

43-2. Plaintiff, a subcontractor, and defendant, the general contractor on a school construction project, entered into a subcontract making payment from the owner to the general contractor a condition precedent to payment by the general contractor to the subcontractor. The subcontract also made final payment to the subcontractor subject to any credit changes by the owner and provided that no action could be brought by the subcontractor against the general contractor unless it was commenced within one year after substantial completion. When the subcontractor brought an action against the general contractor for breach of contract, the general contractor made a motion to dismiss, claiming the action was time barred.

The court noted that while an agreement that reasonably shortens the statute of limitations is permitted, a condition precedent cannot be imposed on that limitation which is outside the plaintiff's control. The court explained that the problem in the case was not the duration of the limitation period but rather its accrual date. The court found that it was "neither fair nor reasonable" to require an action to be commenced within a particular time "while imposing a condition precedent to the action that was not within the plaintiff's control and which was not met within the limitations period." *D & S Restoration, Inc. v. Wenger Constr. Co.*, 160 A.D.3d 924, 75 N.Y.S.3d 505 (2d Dep't 2018) (referring to provision making final payment to the subcontractor subject to any credit changes by the owner and holding that the one-year limitation was unenforceable under those circumstances).

DELAY CLAIMS

43-3. A contractor can bring an action for delay damages against an owner on behalf of a subcontractor if there is a provision in the subcontract permitting the "prime contractor to be a guarantor of job performance, often asserted as pass-through claims made pursuant to a liquidating agreement." The elements of a valid liquidating agreement are: "the imposition of liability on a party for a third party's increased costs, thereby providing the first party with a basis for legal action against the party at fault; a liquidation of liability in the amount of the first party's recovery against the party at fault; and a provision for the pass-through of that recovery to the third party." In this case, the contractor and the subcontractor entered into a valid liquidating agreement. However, as the contractor was not yet paid for the subcontractor's pass-through delay claim, the court found that subcontractor could not yet be paid for any delays caused by the owner. *Superior Site Work, Inc. v. NASDI, LLC*, Docket No. 2:14-cv-01061 (ADS) (SIL), 2018 WL 130932 (E.D.N.Y. Aug. 3, 2018).

DISCOVERY

43-4. The plaintiff demanded production of the defendant-insurer's pre-denial claim file. In response, the insurer moved for a protective order prohibiting the disclosure on the grounds that the file was material prepared in anticipation of litigation. The court held that the insurer failed to establish that the documents in the predenial claim file were collected solely in anticipation of litigation and that they were not prepared in the regular course of business and denied the motion. *Cascade Bldrs. Corp. v. Rugar,* 154 A.D.3d 1152, 63 N.Y.S.3d 543 (3d Dep't 2017) (explaining that the "payment or rejection of claims is a part of the regular business of an insurance company. Consequently, reports which aid [the insurer] in the process of deciding whether to pay or reject a claim are made in the regular course of its business," and are thus "not privileged and are discoverable.").

INSURANCE

43-5. Plaintiffs-owners sought a declaratory judgment that their subcontractors' insurers were obligated to insure, defend and indemnify the plaintiffs in a wrongful death action by virtue of an additional insured provision in the subject policy. Granting the insurers' motion to dismiss, the court held that the extent of coverage was controlled by the terms of the insurance policy, not by the terms of an underlying trade contract. The court noted

that the additional insured endorsement in the policy required a written agreement or contract between the insured and the entity seeking to claim additional insured status. Without this agreement, the court found that the plain terms of the policy were not met and, thus, held that the plaintiffs could not seek coverage from the insurers. *Samsung Fire & Marine Ins. Co. v. RLI Ins. Co.*, Index No. 655169/2016, 58 Misc. 3d 1207(A), 2018 N.Y. Slip Op. 50006(U), 2018 WL 310322 (Sup. Ct. New York Co. Jan. 3, 2018).

43-6. Plaintiff-insurer sought a declaration that it was not obligated to defend the defendant-construction manager in an underlying personal injury action pursuant to an exclusion in its commercial general liability policy. The policy provided that the policy did not apply to losses arising out of construction management, which it defined as the "planning, coordinating, supervising or controlling of construction activities while being compensated on a fee basis...." The lower court denied all parties' summary judgment motions, finding that there were issues of fact. The First Department held that the lower court erred and found that the insurer was entitled to summary judgment declaring that the policy did not afford the insurer coverage in the underlying action based on the fact that the construction manager provided services on a flat fee basis, bringing it under the policy exclusion. *Hous. Cas. Co. v. Cavan Corp. of NY, Inc.*, 158 A.D.3d 586, 71 N.Y.S.3d 455 (1st Dep't 2018).

43-7. In the context of an underlying personal injury action, Vista Engineering Corporation ("Vista"), a general contractor, commenced an action against East Coast Painting (ECP), a subcontractor, and its insurer, Everest Indemnity Insurance Company ("Everest"), seeking a declaration that Everest had a duty to defend and indemnify it in the underlying action. The lower court granted summary judgment in favor of Everest, finding that it had no duty to defend and indemnify Vista, and Vista appealed. The First Department was called on to decide whether ECP had a substantial business presence in New York pursuant to N.Y. Ins. Law § 3420(d)(2).

In this case, because the subcontract between Vista and ECP required ECP to purchase insurance naming Vista and the owner as additional insureds, ECP purchased a policy from Everest to comply with its obligations. After an employee of East Coast brought a personal injury action for injuries he allegedly sustained while working on the project, Vista's insurer sought defense and indemnification from ECP on behalf of Vista, and Everest, ECP's insurer, disclaimed coverage, invoking the "Third Party Action Over" exclusion, which barred claims arising from injuries to ECP's employees.

NEW YORK STATE BAR ASSOCIATION

If you have written an article you would like considered for publication, or have an idea for one, please contact the Editor-in-Chief:

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Articles should be submitted in electronic document format (pdfs are NOT acceptable), along with biographical information.

REQUEST FOR ARTICLES

Vista commenced the instant declaratory judgment action and moved for summary judgment, arguing that Everest had failed to disclaim within a reasonable time, as required by N.Y. Ins. Law § 3420(d)(2), which provides that if "under a liability policy issued or delivered in this state, an insurer shall disclaim liability . . . for death or bodily injury arising out of a[n] . . . accident occurring within this state, it shall give written notice as soon as is reasonably possible of such disclaimer of liability . . . ."

Everest then cross-moved for summary judgment, declaring that it had no duty to defend or indemnify because N.Y. Ins. Law § 3240(d)(2) applied only to insurance policies "issued or delivered" in New York. According to Everest because it was a New Jersey insurer and because it issued the policy to ECP, a New Jersey company, the policy was not "issued or delivered" in New York.

The lower court, relying upon *Carlson v. Am. Int'l Grp., Inc.*, 130 A.D.3d 1477, 16 N.Y.S.3d 637 (4th Dep't 2015), denied Vista's motion and granted Everest's cross motion, holding that because the policy was issued and delivered outside of New York State, the timeliness requirements of N.Y. Ins. Law § 3240(d)(2) did not apply, and Vista appealed. While the matter was still under consideration, the Court of Appeals issued its decision in *Carlson v. Am. Int'l Grp., Inc.*, 30 N.Y.3d 288 (2017) which modified the Fourth Department's decision.

The Court of Appeals held that the applicability of N.Y. Ins. Law § 3420(d)(2) depended on (1) a policy covering risks located in New York, and (2) the insured being located in New York. The Carlson Court, for the first time, determined that a company was "located in" New York if it had a "substantial business presence" there. The Court of Appeals found that under that test the insured in Carlson, DHL, was located in New York. In *dicta*, the Court of Appeals reasoned that the legislature did not intend that a company "doing business in New York and purporting to cover risks in New York" be able to evade the Insurance Law.

The First Department held that the first prong of Carlson was satisfied because the risks covered under the policy included the project which was located in New York State. However, with respect to the second prong of Carlson, whether ECP had a "substantial business presence" in New York, the court found that the record was not sufficiently developed for it to decide that prong, and remanded the case for further proceedings. *Vista Eng'g Corp. v. Everest Indem. Ins. Co.*, 161 A.D.3d 596, 78 N.Y.S.3d 43 (1st Dep't 2018).

MECHANICS' LIENS AND TRUST CLAIMS

43-8. Plaintiff, a subcontractor, sought to enforce a mechanic's lien for monies it was allegedly owed for work it performed on a project owned by the defendant-owner. The court found that the lower court properly granted the owner's summary judgment motion and dismissed the subcontractor's lien foreclosure cause of action because the owner made a *prima facie* showing that nothing was owed to the general contractor when the lien was filed, and the subcontractor failed to raise any issues of fact in opposition.

The court noted that the record did not support the subcontractor's contention that the owner's final payment to the general contractor (for all work completed to date) was invalid because it was an advance payment made to avoid the Lien Law. Noting that the owner made this payment when it became due at the time the owner terminated the contract for convenience, the court found that the fact that the owner knew when it made the final payment that the general contractor still owed money to the subcontractor, but failed to notify the subcontractor of its intention to terminate, was insufficient to establish bad faith. The court also found that the fact that the owner decided to terminate for convenience rather than for cause (for nonpayment of subcontractors) was also insufficient to demonstrate bad faith because the owner was free to terminate on either ground. The court concluded by explaining that the cases the subcontractor relied upon were distinguishable because the payments at issue in those cases were made in advance of when they were due and there was more persuasive evidence of bad faith. *3-G Servs. Ltd. v. SAP V/Atlas 845 WEA Assocs. NF LLC*, 162 A.D.3d 487, 79 N.Y.S.3d 24 (1st Dep't 2018).

43-9. The plaintiff, a homeowner, entered into a contract with defendant-general contractor (GC) to perform renovations on her home. The individual defendant, Nathaniel Greenspun, was the sole member and financial manager of the GC. The GC began working on the project and the plaintiff subsequently made several installment payments on the contract. The plaintiff became concerned about the cost of the renovations that had been performed to date and asked the GC to provide her with copies of invoices and receipts. Although the GC did give her some documentation in response to her request, work on the project came to a halt.

The homeowner commenced an action against both defendants alleging, among other things, that they failed to deposit and hold in trust certain funds that she advanced on the home construction contract and that they diverted a portion of these trust funds for expenditures

that were unrelated to the project, in contravention of the Lien Law. The defendants moved for summary judgment dismissing the complaint against Greenspun individually, and the plaintiff opposed the motion and cross-moved for partial summary judgment. The lower court denied the defendants' motion and granted plaintiff's cross motion. The court found, among other things, that, to the extent that the GC failed to keep proper books and records with regard to the trust funds as required by N.Y. Lien Law § 75, the plaintiff was entitled to an application of the statutory presumption that the GC applied or consented to the application of the trust funds for purposes other than those allowable under the Lien Law. The defendants then appealed.

The court began its analysis by explaining that Lien Law Article 3–a, in particular N.Y. Lien Law § 71-a(4), requires that payments received by a contractor from an owner for a home improvement contract prior to the substantial completion of the work be deposited into a trust account. The contractor, as trustee of these funds, see N.Y. Lien Law § 70(2), must, among other things, maintain books or records with respect to each trust, detailing the trust assets receivable, trust accounts payable, trust funds received, trust payments made with trust assets and transfers in repayment of or to secure advances made pursuant to a notice of lending. Should a trustee fail to maintain these statutorily required books and records, N.Y. Lien Law § 75(4) provides that it is "presumptive evidence that the trustee has applied or consented to the application of trust funds ... for purposes other than a purpose of the trust."

The court found that because the GC failed to maintain a purchase log, failed to produce time records, failed to provide bank statements and failed to produce any evidence that the funds were held in a trust account or accounted for, the plaintiff was entitled to the statutory presumption that the GC applied the trust funds to non-trust purposes and summary judgment was correctly granted in plaintiff's favor. *Teves v. Greenspun*, 159 A.D.3d 1105, 72 N.Y.S.3d 191 (3d Dep't 2018).

43-10. Plaintiff, a commercial tenant, brought an action against her landlords for *quantum meruit* based on renovations she performed on the property and the landlords counterclaimed, alleging that plaintiff willfully exaggerated a mechanic's lien she filed on the premises. Although the plaintiff's claim failed based on her failure to prove the reasonable value of the renovation services allegedly provided, the court found that the defendants' claim was also meritless. The court reasoned that since plaintiff provided no proof as to the reasonable value of her renovation services, the defendants failed to prove the amount by which the plaintiff's lien was willfully exaggerated. *Wang Jia v. Kang*, 161 A.D.3d 463, 77 N.Y.S.3d 20 (1st Dep't 2018).

43-11. The court was presented with the issue of whether pre-construction management services which, by definition, are completed before the physical construction work on the project begins, fell within the definition of improvement of real property under the Lien Law. The petitioner argued that because the lien was explicitly based on a claim of "pre-construction management services" rather than "management services provided during construction," it appeared from the face of the lien that it was invalid. According to the petitioner, dismissal was warranted because the Lien Law does not cover pre-construction management services.

The court began its analysis by noting that, pursuant to N.Y. Lien Law § 3, "[a] contractor who performs labor . . . for the improvement of real property . . . at the request of the owner thereof, . . . shall have a lien for . . . the value, or the agreed price, of such labor." The court stated that the term "improvement as defined in N.Y. Lien Law § 2(4), include[d] the demolition, erection, alteration or repair of any structure upon, connected with, or beneath the surface of, any real property and any work done upon such property or materials furnished for its permanent improvement . . . and shall also include the drawing by any architect or engineer or surveyor, of any plans or specifications or survey, which are prepared for or used in connection with such improvement."

Pointing out that "[l]ittle guidance" was found in case law concerning "what types of work fall within and outside the category of improvements under the Lien Law," the court explained that no case was cited or found by the court that explicitly considered the term "pre-construction management services," or discussed "the definition, nature and extent of such services." After discussing what the court considered were the 'few cases that address what types of work fall within and outside the Lien Law's coverage," the court held that where the pre-construction services were undertaken for purpose of improvements anticipated to be made to the property in the future, the lien was permitted and denied the petition to summarily discharge the lien. *In re Old Post Rd. Assocs.*, 60 Misc. 3d 391, 77 N.Y.S.3d 283 (Sup. Ct. Westchester Co. 2018).

OWNER RIGHT TO INFORMATION

43-12. Plaintiff and defendant had entered into a stipulated sum construction contract but at a certain point plaintiff refused to make any further payments and demanded that defendant provide plaintiff with

documentation concerning the actual construction and administration costs on the project. The court explained that in stipulated sum contracts, the owner is obligated to pay the fixed amount regardless of what the work costs and the owner is not entitled to review the costs incurred by the contractor absent language to the contrary in the agreement. The court held that, pursuant to the terms of the relevant contract, the defendant did not breach the contract by failing to provide the plaintiff with its actual costs. *City of Buff. Sch. Dist. v. LPCiminelli, Inc.*, 159 A.D.3d 1468, 73 N.Y.S.3d 836 (4th Dep't 2018).

PERFORMANCE BONDS

43-13. In this case, the court held that defendant Travelers Casualty and Surety Company of America ("Travelers") established *prima facie* that it was not liable under the performance bond it issued to defendant construction manager Parsons Brinckerhoff, Inc. ("Parsons") for plaintiff subcontractor's work, because Parsons failed to mail it notice of the termination of the subcontract, as required by the performance bond, before paying a replacement contractor pursuant to the bond. The court found that in opposition, Parsons failed to raise an issue of fact as to whether it mailed such notice because the affidavits submitted by Parsons were unaccompanied by either an affidavit of service or actual proof of mailing or a description of the practices or procedures Parsons had in place to insure proper mailing. Furthermore, the court found that although Travelers was not required to show "actual prejudice" arising from the lack of notice, in any event it claimed actual prejudice from being deprived of its completion options under the performance bond. *Indep. Temp. Control Servs., Inc. v. Parsons Brinckerhoff, Inc.*, 159 A.D.3d 636, 70 N.Y.S.3d 847 (1st Dep't 2018).

PUBLIC CONTRACTS—BIDDING

43-14. Petitioner brought an Article 78 proceeding requesting that respondent-water authority be required to award a contract to petitioner as the lowest bidder. Although the petitioner was the lowest bidder, the water authority had determined that petitioner was a non-responsible bidder based on petitioner's unsatisfactory performance under a prior contract. The court denied the petition, explaining that under competitive bidding letting, a municipality should consider the bidder's skill, judgment and integrity in determining the responsibility of a bidder. Furthermore, the court found that a municipality's decision to reject a bid based upon a contractor's prior inadequate performance constituted a rational basis for the determination that the bidder was not the lowest responsible bidder. *In re Lunati Paving & Constr. of NY, Inc.*

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Upcoming Torts, Insurance and Compensation Law Section Events and Co-Sponsored Events

Alternative Dispute Resolution in Personal Injury Litigation

Wednesday, October 3rd | 9:00 a.m. - 5:00 p.m. | Long Island
Thursday, October 4th | 9:00 a.m. - 5:00 p.m. | NYC

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Agenda Topics & Faculty

- Mediation in Personal Injury Matters - The Mediator's Perspective
  Long Island: Susan Hernandez, Esq. | NAM
  NYC: Sam Rosmarin, Esq. | Sam Rosmarin, PLLC
- Practical Applications of Alternative Dispute Resolutions
  Long Island/NYC: Robert A. Glick, Esq. | Brand Glick Brand, P.C.
- Mediation Statements: Practical Guidance on Preparing Persuasive Statements
  Long Island/NYC: Hon. Allen Hurkin-Torres (Ret) | JAMS
- Mediation from The Insurance Company/Claim Adjuster's Perspective
  Long Island/NYC: Andrew H. Isakoff, Esq. | Sedgwick Claims Management Services, Inc.
- Summary Jury Trials
  Long Island/NYC: Richard M. Sands, Esq. | Law Offices of Richard M. Sands, P.C.
- Arbitration and Arbitration Agreements in Civil Litigation
  Long Island: Hon. Daniel Palmieri (Ret.) | NAM   NYC: Hon. Larry S. Schachner (Ret.) | NAM
- Ethical Issues related to Alternative Dispute Resolution
  Long Island/NYC: Panel Discussion

Program Chair: Robert A. Glick, Esq. | Brand Glick Brand, P.C.

NYSBACLE

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Alternative Dispute Resolution in Personal Injury and Civil Litigation

Program Description: More and more personal injury disputes and civil litigation disputes are being resolved through mediation, arbitration, and other forms of alternative dispute resolution (ADR). Learn how insurance companies and claims adjusters approach mediation in personal injury matters and explore the ethical issues related to the increased use of ADR in civil litigation. Don't miss this opportunity to develop new skills in this expanding area of law.

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- Practical Applications of Alternative Dispute Resolution
- Mediation from the Insurance Company/Claim Adjuster's Perspective
- Arbitration and Arbitration Agreements in Civil Litigation
- Ethical Issues related to Alternative Dispute Resolution

Program Chair
Robert Glick, Esq. | Brand Glick Brand, P.C.

Who Should Attend This Program: Personal injury attorneys; civil litigators; attorneys interested in expanding their practice to include ADR services.

Wednesday, October 3, 2018 | Melville Marriott | Long Island
Thursday, October 4, 2018 | AMA Executive Conference Center | NYC

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Torts, Insurance and Compensation Law Section Member: $150
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6.0 Skills
1.0 Ethics

TICL Workers' Compensation Law Division Meeting

Friday, October 19, 2018 | 11:00 a.m. - 1:30 p.m. | New York State Bar Association | One Elk Street | Albany, NY

Dial-in is available upon request.

We will be discussing current workers' compensation practice and new initiatives of the Workers' Compensation Board. Division members may RSVP to ticlsection@nysba.org (please specify whether you will participate in person or by phone).

Not a Division member? Consider joining! (See Division details at www.nysba.org/TICLWCD) NYSBA and TICL Section membership (www.nysba.org/JoinTICL) are prerequisite.

Emerging Issues in Environmental Insurance

Friday, November 2, 2018, 8:30 a.m. – 1:00 p.m. | Latham & Watkins | 885 3rd Avenue |New York City

4 MCLE Credits: Areas of Professional Practice

Program Co-Chairs:
Gerard P. Cavaluzzi, Esq., Vice President & General Counsel, Kennedy/Jenks Consultants, Inc.
Michele Schroeder, Esq., Owner and Principal, Environmental Risk Inc.

Program Description:
Join key decision makers from the leading environmental insurance carriers, including AWAC, Beazley, Chubb, Ironshore and XL along with a skilled panel of experienced environmental insurance counsel, brokers and risk management specialists as they examine critical aspects of environmental insurance coverage and provide valuable information on using environmental insurance as a risk management tool in transactions, litigation and operations.

Sessions will address emerging areas of legal liability in the environmental arena and evolving coverages and will feature practical tips from environmental insurance and coverage professionals. Lessons learned will also be presented to update practitioners with the latest case law and insightful strategies to maximize available environmental coverage and minimize disputes with carriers. Leaders of major environmental insurance companies will contribute to an informative environmental insurance market update and experts will discuss current coverage issues and claim trends.

Who Should Attend: Transactional and Environmental Attorneys, including In-House Counsel; Commercial Insurance Litigators; Real Estate Attorneys engaged in commercial transactions; Risk Managers; Insurance Brokers; and Underwriters involved in environmental matters.

Construction Site Accident Claims and Litigation CLE Program Series

Wednesday, November 7, 2018 | CFA Society New York | NYC
Program Chair: Joanna M. Roberto, Esq. | Gerber Ciano Kelly Brady, LLP

Friday, November 9, 2018 | Hyatt Place Buffalo Amherst | Buffalo
Program Chair: Kevin D. Szczepanski, Esq. | Barclay Damon LLP

Thursday, November 15, 2018 | Melville Marriott | Long Island
Program Chair: Elizabeth A. Fitzpatrick, Esq. | Island Companies

*The program starts at 9:00 a.m. and ends at 5:00 p.m. at all locations

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Agenda Topics

- Understanding the Labor Law Statute
- Emerging Issues in Construction Defect Claims
- The Effect and Interplay of Workers' Compensation
- Investigation, Depositions and Summary Judgment Motions
- Additional Insured Coverage: Defending All, None or Some
- Mechanic Lien's, Surety Bonds and Performance Issues
- Direct and Cross-Examination of the Site Foreman as an Adverse Witness

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Construction Site Accident Claims & Litigation

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Thursday, November 15 | Melville Marriott | Long Island
*9:00 a.m. - 5:00 p.m. at all locations

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Construction Site Accident Claims & Litigation

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Section Member: $150
Early Bird: $150 for members that register before October 8.

2018 Law School for Insurance Professionals

November 7, 2018: Law School for Insurance Professionals

8:55 a.m. - 4:30 p.m. (Registration starting at 8:30 a.m.)

Location: New York State Bar Association | One Elk Street | Albany, NY

Register online or by phone: (800) 582-2452 (M-F, 8:45am-4:45pm), event code TICLIPAL18.

Program Description:
Join insurance industry professionals and their counsel for a unique program involving direct interaction between some of New York's top insurance and defense attorneys and the industry they serve. Attend to receive insights and updates on current legal issues that the savvy insurance professional won't want to miss! Law School for Insurance Professionals is a full-day seminar where defense attorneys share their knowledge and experience with insurance professionals from around the State.

This course does not carry MCLE or CE credit. Attendees at the live presentation in Albany will receive a certificate of attendance.

2018 Topics:
Additional Insured Coverage: Shifting The Risk With Contracts And Endorsement
Auto: Impact of Court of Appeals Decision in *Rodriguez v. City of New York*—Who is responsible and how to handle Uber/Lyft and personal auto policy claim
Claims Investigation: When, Why and How Should You?
Dealing With Data Breach, Business Interruption and Privacy Claims
Primary vs. Excess Insurers: Friends or Foes?
Workers' Compensation: Compensability Issues Arising Out of MVAs
Recovery and Reimbursement: How Do I Do That?

Program Chairs:
Joanna M. Roberto, Esq. (Gerber Ciano Kelly Brady LLP, New York, NY), TICL CLE Committee Co-Chair
Elizabeth A. Fitzpatrick, Esq. (Island Companies, Calverton, NY), TICL CLE Committee Co-Chair
Dirk Marschhausen, Esq. (Marschhausen & Fitzpatrick PC, Hicksville, NY), Local Program Chair

Agenda:

8:30 - 8:55 a.m.	Registration
8:55 - 9:00 a.m.	Welcome and Introductions
9:00 - 9:55 a.m.	Additional Insured Coverage: Shifting the Risk With Contracts and Endorsements
9:55 - 10:45 a.m.	Dealing With Data Breach, Business Interruption and Privacy Claims
10:45 - 11:00 a.m.	Refreshment Break
11:00 - 11:55 a.m.	**Claims Investigation: When, Why and How Should You?** Before and After Litigation; Impact of Covered and Uncovered Claims
11:55 - 1:00 p.m.	Lunch (included on site)
1:00 - 1:50 p.m.	**Auto: Impact of Court of Appeals Decision in Rodriguez v. City of New York** Who Is Responsible and How to Handle Uber/Lyft and Personal Auto Policy Claims
1:50 - 2:40 p.m.	Primary vs. Excess Insurers: Friends or Foes?
2:50 - 3:40 p.m.	Workers' Compensation: Compensability Issues Arising Out of MVAs
3:40 - 4:30 p.m.	**Recovery and Reimbursement: How Do I Do That?** Interaction between GOL 5-335, Statutory Liens, Medicare/Medicaid, Erisa, Health/Disability Claims for Reimbursement; and Which Are Recoverable and Which are Not in the Third Party Action and Why It Is Important in Determining Claim Valuations

Speakers:
Eileen E. Buholtz, Esq., Connors, Corcoran & Buholtz, PLLC (Rochester, NY)
Paul J. Callahan, Esq., Brown & Kelly, LLP (Buffalo, NY)
Alyssa Jordan Pantzer, Esq., Ryan & Conlon, LLP (New York, NY)
Dirk Marschhausen, Esq., Marschhausen & Fitzpatrick PC (Hicksville, NY)

Welcome to the TICL Section Community!

What Are Communities?

NYSBA Communities are private, online professional networks for members. They are built on the concept of listserves, allowing for member-to-member communication across the Section, but they also offer enhanced features for networking and participation, including personalized member profiles, a member directory, and a shared online document library.

How Can I Use Them?

Communities are seamlessly integrated with nysba.org: you can use your NYSBA member login and password. To access the TICL Section Community, you must be a member of the TICL Section. You can interact with Communities via the online interface, by email, in NYSBA's LawHUB, or via a mobile app, at your preference. To download the app, search for "NYSBA Communities" in the Apple or Google Play Store. Find our community at www.nysba.org/ticlcommunity.

NEW YORK STATE BAR ASSOCIATION

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JANUARY 14–18
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JANUARY / 2019

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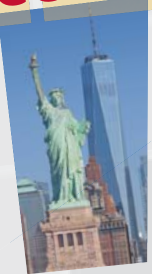
1 New Year's Day

21 Martin Luther King Day



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Deconstruction

A publication of the Construction & Surety Law Division of the Torts, Insurance and Compensation Law Section of the New York State Bar Association

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