

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D22228  
T/kmg

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Submitted - January 26, 2009

ROBERT A. SPOLZINO, J.P.  
FRED T. SANTUCCI  
DANIEL D. ANGIOLILLO  
RANDALL T. ENG, JJ.

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2008-04067

DECISION & ORDER

161 Hudson, LLC, respondent,  
v Sirius America Insurance Company, appellant,  
et al., defendants.

(Index No. 450/04)

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White, Quinlan & Staley, LLP, Garden City, N.Y. (Christopher M. Otton of counsel),  
for appellant.

Shapiro, Beilly, Rosenberg & Aronowitz, LLP, New York, N.Y. (Roy J. Karlin of  
counsel), for respondent.

In an action, inter alia, for a judgment declaring that the defendant Sirius America Insurance Company is obligated to defend and indemnify the plaintiff in an underlying action entitled *Zhong K. Wang v 161 Hudson LLC*, pending in the Supreme Court, Kings County, under Index Number 13240/03, the defendant Sirius America Insurance Company appeals from a judgment of the Supreme Court, Kings County (Held, J.), entered April 1, 2008, which, among other things, declared that it is obligated to defend and indemnify the plaintiff in the underlying action.

ORDERED that the judgment is affirmed, with costs.

The Supreme Court properly found that the defendant Sirius America Insurance Company (hereinafter Sirius) is obligated to defend and indemnify the plaintiff in the underlying action, as the plaintiff demonstrated that the delay by Sirius in issuing a disclaimer of coverage for the underlying lawsuit was unreasonable as a matter of law (*see* Insurance Law § 3240[d]; *Tex Dev. Co., LLC v Greenwich Ins. Co.*, 51 AD3d 775; *Sirius Am. Ins. Co. v Vigo Constr. Corp.*, 48 AD3d

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450; *Liberty Mut. Fire Ins. Co. v National Cas. Co.*, 47 AD3d 770; *Matter of Allstate Ins. Co. v Swinton*, 27 AD3d 462). Accordingly, Sirius is precluded from disclaiming coverage based on a late notice of claim or policy exclusion (see Insurance Law § 3420[d]; *Pile Found. Constr. Co. v Investors Ins. Co. of Am.*, 2 AD3d 611).

The remaining contentions raised by Sirius either are without merit or need not be reached in light of our determination.

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and ENG, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court