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publication in the New York Reports.

USCOA2 No. 163
Briggs Avenue LLC,
 Appellant,
 v.
Insurance Corporation of
Hannover,
 Respondent.

Robert A. Scher, for appellant.
Nancy Lyness, for respondent.
Complex Insurance Claims Litigation Association, amicus
curiae.

SMITH, J.:

 We hold that a liability insurer is entitled to
disclaim coverage when the insured, because of its own error in
failing to update the address it had listed with the Secretary of
State, did not comply with a policy condition requiring timely
notice of a lawsuit.

Briggs Avenue L.L.C. is the owner of a building in the Bronx. The company was incorporated in 1999. Shaban Mehaj is its manager and only member. As required by Limited Liability Company Law § 301, Briggs's articles of organization designated the Secretary of State as its agent to receive service of process. The articles included Briggs's address, but Briggs later moved, and Mehaj did not notify the Secretary of State of the change. His explanation is that the lawyer who formed the company for him did not tell him of the need to keep the address updated.

In July 2003, a tenant of the building, Nelson Bonilla, began a personal injury action against Briggs, and served the summons and complaint on the Secretary of State. Because the Secretary of State did not have a current address for Briggs, Mehaj did not receive the summons and complaint and did not know that the lawsuit existed. He learned of it only in April 2004, when Bonilla served directly on Briggs a motion for a default judgment. Briggs then gave notice to its liability insurer, Insurance Corporation of Hannover (ICH), of the claim against it. ICH promptly disclaimed coverage, relying among other things on a policy provision saying: "If a claim is made or 'suit' is brought against any insured, you must . . . [n]otify us as soon as practicable."

Briggs brought a declaratory judgment action in Supreme Court against ICH, asking that the insurer be required to defend

the Bonilla case. ICH removed the action to the United States District Court for the Southern District of New York, and the District Court dismissed Briggs's complaint, holding that ICH's disclaimer was valid. Briggs appealed to the United States Court of Appeals for the Second Circuit, which certified to us the following question:

"Upon all the facts of this case, given the terms of the insurance policy and the reason for the insured's failure to give more prompt notice of the lawsuit to the insurer, should the insurer's disclaimer of coverage be sustained?"

Our answer to the question is yes.

The validity of ICH's disclaimer turns on whether Briggs complied with the condition of the policy requiring it to give notice of a lawsuit to ICH "as soon as practicable." Clearly, it did not. It was unquestionably practicable for Briggs to keep its address current with the Secretary of State, and thus to assure that it would receive, and be able to give, timely notice of the lawsuit. Briggs's failure to do so was simply an oversight.

Briggs relies on Agoado Realty Corp. v United Intl. Ins. Co. (95 NY2d 141 [2000]), in which we held that there was an issue of fact as to whether notice of a lawsuit was given "as soon as practicable." But Agoado is distinguishable. In that case, the Secretary of State sent documents to the insureds' lawyer, but the lawyer had died, and the insureds claimed they

did not know of his death. Thus, in Agoado it may really have been impracticable for the insureds to find out about the lawsuit and give timely notice to the insurer. In this case, however, it is clear that the insured could have prevented the mishap.

Briggs's argument is essentially that its mistake was understandable; that it caused no prejudice to the insurer; and that the loss of insurance coverage is a harsh result. All this may be true, but it is irrelevant. We have long held, and recently reaffirmed, that an insurer that does not receive timely notice in accordance with a policy provision may disclaim coverage, whether it is prejudiced by the delay or not (Argo Corp. v Greater N.Y. Mut. Ins. Co., 4 NY3d 332, 339 [2005]; Security Mut. Ins. Co. of N.Y. v Acker-Fitzsimons Corp., 31 NY2d 436, 440 [1972]). While this rule produces harsh results in some cases, it also, by encouraging prompt notice, enables insurers to investigate claims promptly and thus to deter or detect claims that are ill-founded or fraudulent. The Legislature, weighing the competing interests at stake, has recently enacted legislation that strikes a different balance, more favorable to the insured (see L 2008, ch 388, §§ 2, 4 [amending Insurance Law § 3420, applicable to policies issued after January 17, 2009]), but that legislation has not yet become effective. The common law no-prejudice rule applies to this case.

Accordingly, the certified question should be answered in the affirmative.

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Following certification of a question by the United States Court of Appeals for the Second Circuit and acceptance of the question by this Court pursuant to section 500.27 of the Rules of Practice of the New York State Court of Appeals, and after hearing argument by counsel for the parties and consideration of the briefs and the record submitted, certified question answered in the affirmative. Opinion by Judge Smith. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Pigott and Jones concur.

Decided November 20, 2008