

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Webber, J.P., Friedman, Mendez, Shulman, Hagler, JJ.

5493

IROHA CORPORATION doing business as
SAKE BAR HAGI,
Plaintiff-Appellant,

Index No. 650880/18
Case No. 2024-06358

-against-

KOOKMIN BEST INSURANCE COMPANY,
formerly known as LEADING INSURANCE GROUP
INSURANCE CO., LTD. (US BRANCH), et al.,
Defendants-Respondents.

Law Office of John G. Aicher, Jr., Garden City (John G. Aicher, Jr. of counsel), for appellant.

Chartwell Law, New York (Linda Fridegotto of counsel), for respondents.

Order, Supreme Court, New York County (Arthur F. Engoron, J.), entered September 5, 2024, which denied plaintiff's motion for summary judgment declaring that defendant insurers had a duty to defend plaintiff in an underlying action, and granted defendants' cross-motion for summary judgment dismissing the complaint, unanimously modified, on the law, to deny defendants' cross-motion, and otherwise affirmed, without costs.

Plaintiff commenced this action for, among other things, a declaration that defendant insurers have a duty to defend it in an underlying negligence action. Plaintiff claims that on April 9, 2017, the attorney for Dylan Riley, the underlying plaintiff, sent a letter to plaintiff notifying it of an incident that occurred on or about May 28, 2014, in which Riley was allegedly injured on a stairwell on plaintiff's premises. Plaintiff notified

defendant insurers of Riley's allegations in an email dated April 24, 2017. This was the first notice that plaintiff provided to defendants concerning Riley's incident. Riley commenced the underlying negligence action in April 2017.

The court should have denied defendants' cross-motion for summary judgment dismissing the complaint. The record presents questions of fact concerning when plaintiff was required to provide notice of the accident to defendant, and whether plaintiff's alleged delay was reasonable (*see Travelers Ins. Co. v Volmar Constr. Co.*, 300 AD2d 40, 42-43 [1st Dept 2002]). The primary evidence relied upon to establish that plaintiff should have been on notice in 2014 was not in admissible form.

The record also presents questions of fact concerning whether defendants suffered any actual prejudice due to the alleged delay (Insurance Law § 3420[a][5], [c][2][C]; *see Salvo v Greater N.Y. Mut. Ins. Co.*, 213 AD3d 587, 588 [1st Dept 2023]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: January 6, 2026



Susanna Molina Rojas
Clerk of the Court