

Memorandum in Support

COMMITTEE ON CIVIL PRACTICE LAW AND RULES

CPLR #7

June 18, 2007

A. 8363

By: M. of A. Weinstein

Assembly Committee: Judiciary

Effective Date: Immediately

AN ACT to amend the civil practice law and rules, in relation to declaratory judgment action against an insurer

LAW AND SECTION REFERRED TO: CPLR §3001

THE COMMITTEE ON CIVIL PRACTICE LAW AND RULES SUPPORTS THIS LEGISLATION

This bill would amend CPLR 3001, which authorizes declaratory judgment actions, to permit a declaratory judgment action against an insurer by someone who has interposed a claim against that insurer's insured.

Insurance Law § 3420 prohibits suits against insurers by injured parties or others (e.g., cross-claiming defendants) who sued their insureds until after a judgment was entered. In Lang v. Hanover Ins. Co., 3 N.Y.3d 350 (2004), the Court of Appeals, resolving a conflict among departments of the Appellate Division, ruled that this prohibition applies not only to suits to recover money damages, but also to declaratory judgment actions, brought to determine whether the insurance covers the incident sued upon. This bill would effectively overrule Lang.

The bill should become law. At this point, only the insured may seek, through a declaratory judgment action, to challenge an insurer's disclaimer or denial of coverage prior to judgment. However, impecunious or defunct (corporate) insureds often have no interest in ascertaining whether denial of coverage was proper. What is more, an individual defendant whose insurer has denied coverage will often find it financially difficult to hire attorneys in defense of the lawsuit against him/her, much less to hire attorneys to press a declaratory judgment action against the insurer. Plaintiffs and cross-claiming (and otherwise insured) defendants may have both the financial interest and motivation to seek a declaration, but are precluded by Lang.

The result is that the parties have to wait for a determination as to the propriety of an insurer's denial of coverage until after judgment. That places significant financial imposition on the insured whose insurer wrongfully disclaimed and is now forced to defend the action at his/her own expense. It also makes a potential settlement of the action much more difficult. Seriously injured plaintiffs are unable to gauge the potential recovery so as to reach an informed conclusion as to a settlement figure. Cross-claiming co-defendants and their insurers, unsure of coverage for their co-defendant, are often unwilling to pay more than what they view (based on relative fault and legal responsibility) as their fair share of a settlement package. As a result, cases which should be settled are not, resulting in unnecessary expenditure of attorneys' fees and the waste of limited judicial resources.

This bill would solve that problem. Insurers would still be protected from suit for money damages prior to the entry of judgment. Since disclaiming insurers may presently face pre-judgment declaratory judgment actions brought by their insureds (if in a financial condition to seek same), there should be little prejudice in allowing other interested parties to do so as well.

For the foregoing reasons, the Committee on Civil Practice Law and Rules **SUPPORTS** this legislation.

Person who prepared the memorandum: David B. Hamm

Chair of the Committee: David L. Ferstendig