

# Insurers Must Give Prompt and Specific Notice to Effectively Disclaim Coverage

In a victory for insurance policyholders, on March 18, 2021, the U.S. Court of Appeals for the Second Circuit issued a decision in *Philadelphia Indemnity Insurance Company v. Yeshivat Beth Hillel of Krasna*, in which the court upheld a grant of summary judgment in favor of a Brooklyn school, Yeshivat Beth Hillel of Krasna.<sup>1</sup>

The school had sought insurance coverage in connection with a May 2013 accident in which a pedestrian was struck and severely injured by a school bus operated by the Yeshivat school. After the pedestrian filed suit against the school, the school notified its insurer, Philadelphia Indemnity Insurance Company (“Philadelphia”). Philadelphia investigated the claim and sent a “reservation of rights” letter to the school indicating that the school’s claim might not be covered under the policy.

As will be familiar to most policyholders, insurance companies often issue reservation of rights letters even when they otherwise acknowledge coverage and begin to defend a claim.

In the *Yeshivat* case, although Philadelphia noted certain reservations of rights in its letter, Philadelphia otherwise indicated that it would defend the school against the plaintiff’s claims in the personal injury action. However, three years later, Philadelphia commenced a declaratory judgment action seeking a ruling that it was not obligated to defend or indemnify the school in the underlying personal injury litigation based on exclusions in the insurance policy. In response, the school counterclaimed for a declaratory judgment obligating Philadelphia to defend and indemnify it.

The U.S. District Court for the Eastern District of New York ruled in favor of the school. In affirming the District Court’s decision, the Second Circuit held that Philadelphia’s “reservation of rights” letter failed to properly disclaim coverage under New York Insurance

Law § 3420(d), and that Philadelphia had therefore waived its right to invoke the policy exclusion that it believed precluded coverage.

Under New York law, an insurer that seeks to “disclaim liability or deny coverage for death or bodily injury arising out of a motor vehicle accident or any other type of accident” must “give written notice as soon as is reasonably possible of such disclaimer of liability or denial of coverage.”<sup>2</sup> Moreover, the notice of disclaimer must be detailed and specific. The insurer must “apprise the claimant with a high degree of specificity of the ground or grounds on which the disclaimer is predicated.”<sup>3</sup>

In the *Yeshivat* case, Philadelphia’s reservation of rights letter did not meet those standards, as it stated only that there was “a question” as to whether or not Philadelphia had a duty to defend or indemnify the school, not that Philadelphia was disclaiming coverage. As the District Court explained, the letter was “too equivocal and imprecise to have provided clear notice to [the school] of the precise exclusion that the insurer invoked.”<sup>4</sup>

Because Philadelphia’s reservation of rights letter otherwise indicated that Philadelphia would defend the underlying claim, and Philadelphia knew or should have known all of the relevant facts underlying the claims for which it sought to disclaim coverage, the letter was ineffective to disclaim coverage.

As the *Yeshivat* decision makes clear, New York law demands exacting specificity when an insurer seeks to disclaim coverage, and routine reservation of rights letters are not always effective. When receiving a reservation of rights letter, policyholders should consult with an attorney to review any specific exclusions cited by the insurance carrier and determine what steps, if any, the policyholder must take in response.

*If you have any questions regarding insurance coverage issues, please contact Ryan A. Lema, Partner, at (716) 504-5790, rlema@phillipslytle.com, or the Phillips Lytle attorney with whom you have a relationship. ■*

<sup>1</sup> *Philadelphia Indem. Ins. Co. v. Yeshivat Beth Hillel of Krasna, Inc.*, 839 F. App’x 658 (2d Cir. 2021).

<sup>2</sup> N.Y. Ins. Law § 3420(d)(2).

<sup>3</sup> *Gen. Accident Ins. Grp. v. Cirucci*, 46 N.Y.2d 862, 864 (1979).

<sup>4</sup> *Philadelphia Indem. Ins. Co. v. Yeshivat Beth Hillel of Krasna, Inc.*, 2019 WL 3500944, at \*2 (E.D.N.Y. July 31, 2019).