



COUGHLIN DUFFY LLP

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New Jersey Supreme Court Extends "Appreciable Prejudice" Standard For Late Notice Defense To Excess Automobile Policies

Yesterday, the New Jersey Supreme Court extended the requirement that insurers prove "appreciable prejudice" to prevail on a late notice defense to excess automobile policies.

In *Gazis v. Miller*, an excess automobile policy required that the insured provide notice of a claim "no more than 120 days" after receiving notice of events giving rise to the claim. The Supreme Court declined to enforce the notice requirement, reasoning that the "public policy of this State in favor of protecting automobile accident victims" justified departure from the policy language. The Court further found that the insurer did not demonstrate that the notice provision was "material to the coverage" or that it suffered any prejudice, let alone the "appreciable prejudice" necessary to assert the late notice defense.

Justice Rivera-Soto authored a strong dissenting opinion, reasoning that "[s]ophisticated commercial parties are

entitled to rely on the commonsense notion that they will be bound by the plain meaning of the words to which they agree" and criticizing the majority for invoking the State's public policy "to run roughshod over the uncontested facts and clear and unambiguous policy language."

This decision represents another example of the Court's refusal to enforce unambiguous insurance policy language for public policy reasons. Nevertheless, insurers may be able to argue that this decision should be limited to cases where the State has expressed a strong public policy in favor of broad coverage. One promising aspect of this opinion is the strong dissent by recently-appointed Justice Rivera-Soto, who embodies a long-awaited pro-insurer voice on the Court.

Should you have any questions or comments, please do not hesitate to contact us.

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