

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D20474
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_____AD3d_____

Argued - September 8, 2008

REINALDO E. RIVERA, J.P.
HOWARD MILLER
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS, JJ.

2007-04406

DECISION & ORDER

Jonathan D. Bloom, et al., appellants, v St. Paul
Travelers Companies, Inc., et al., respondents.

(Index No. 3260/04)

Ball & Rubin, LLP, White Plains, N.Y. (Wayne M. Rubin of counsel), for appellants.

Kornstein Veisz Wexler & Pollard, LLP, New York, N.Y. (Marvin Wexler and Daniel
A. Cohen of counsel), for respondents.

In a class action, inter alia, to recover damages for breach of an insurance contract and for the reformation of an insurance contract, the plaintiffs appeal from a judgment of the Supreme Court, Rockland County (Sherwood, J.), entered April 6, 2007, which, upon an order of the same court entered April 3, 2007, granting the defendants' motion for summary judgment dismissing the complaint, and denying their cross motion for summary judgment reforming a "PLUS" umbrella insurance policy to include supplemental underinsured motorist coverage previously provided by the defendants in a "SCOPE" umbrella insurance policy, is in favor of the defendants and against them dismissing the complaint.

ORDERED that the judgment is reversed, on the law, with costs, the complaint is reinstated, the defendants' motion for summary judgment dismissing the complaint is denied, the plaintiffs' cross motion for summary judgment reforming a "PLUS" umbrella insurance policy to include supplemental underinsured motorist coverage previously provided by the defendants in a "SCOPE" umbrella insurance policy is granted to the extent of reforming the "PLUS" insurance

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policy at issue to include supplemental underinsured motorist coverage in the amount of \$25,000 because of bodily injury to or death of one or more persons in any one accident until such time as that coverage or the “PLUS” umbrella insurance policy is properly terminated, and the order entered April 3, 2007, is modified accordingly.

The plaintiff Jonathan Bloom purchased a “SCOPE” umbrella policy of insurance issued by the defendants which provided supplemental underinsured motorist (hereinafter SUM) coverage. In 2001 the defendants substituted a “PLUS” umbrella policy, which did not provide SUM coverage, for the “SCOPE” policy. Although the defendants mailed the plaintiffs a document entitled “Summary of Major Coverage Changes,” that document failed to comply with the requirement of Insurance Law § 3425(d)(3) that the “[n]otice of intention to substitute a different policy form shall be accompanied by a full and clear comparison of the differences between the policy form last issued and the substitute policy form.” The defendants’ failure to provide the requisite notice entitles the plaintiffs to reformation of the “PLUS” policy to include SUM coverage in the amount of \$25,000 because of bodily injury to or death of one or more persons in any one accident (*see Hay v Star Fire Ins. Co.*, 77 NY 235, 240; *Byron v Liberty Mut. Ins. Co.*, 63 AD2d 710; *Janes v New York Cent. Mut. Ins. Co.*, 281 AD2d 982; *cf. Allstate Ins. Co. v Young*, 265 AD2d 278).

Contrary to the defendants’ contention, the action was timely commenced. The action is based on a dispute arising under a contract of insurance, which seeks both its reformation and the payment of SUM benefits under the reformed policy. The applicable statute of limitations is thus the six-year period set forth in CPLR 213(2) (*see Mandarino v Travelers Property Casualty Ins. Co.*, 37 AD3d 775; *Matter of ELRAC, Inc. v Suero*, 38 AD3d 544).

RIVERA, J.P., MILLER, ANGIOLILLO and CHAMBERS, JJ., concur.

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DECISION & ORDER ON MOTION

Jonathan D. Bloom, et al., appellants, v St. Paul
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Motion by the respondents on an appeal from a judgment of the Supreme Court, Rockland County, entered April 6, 2007, to strike Point I(A) of the appellants’ reply brief on the ground that it contains an argument raised for the first time on appeal. By decision and order on motion of this Court entered March 19, 2008, the motion was held in abeyance and referred to the Justices hearing the appeal for determination upon the argument or submission thereof.

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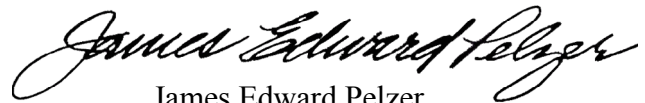
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Upon the papers filed in support of the motion, the papers filed in opposition thereto, and upon the argument of the appeal, it is

ORDERED that the motion is denied.

RIVERA, J.P., MILLER, ANGIOLILLO and CHAMBERS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court