

SUPREME COURT, APPELLATE DIVISION
FIRST DEPARTMENT

JULY 7, 2009

THE COURT ANNOUNCES THE FOLLOWING DECISIONS:

Gonzalez, P.J., Mazzairelli, Andrias, Moskowitz, Renwick, JJ.

74 Industry City Management, et al., Index 114330/05
 Plaintiffs-Appellants,

-against-

Atlantic Mutual Insurance Company,
Defendant-Respondent.

Weg and Myers, P.C., New York (Joshua L. Mallin of counsel), for appellants.

Litchfield Cavo LLP, New York (Mark A. Everett of counsel), for respondent.

Order and judgment (one paper), Supreme Court, New York County (Walter B. Tolub, J.), entered October 25, 2007, which, insofar as appealed from as limited by the briefs, denied plaintiffs' motion for summary judgment declaring that defendant is obligated to indemnify plaintiffs Industry City Management, 1-10, Industry Associates, LLC, 1-10, and Industry Associates Corp. (collectively Industry) in the amount of \$250,000 for their portion of the settlement paid in the underlying personal injury

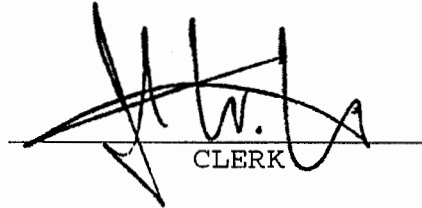
action, and granted defendant's cross motion for summary judgment declaring that it was not obligated to defend and indemnify plaintiffs in the underlying action, unanimously reversed, on the law, without costs, defendant's cross motion denied and plaintiffs' motion granted, and it is declared that defendant is obligated to indemnify Industry in the amount of \$250,000.

Industry correctly argues that a March 2005 letter to defendant, written on Industry's behalf by its own insurer's claims administrator, seeking coverage for Industry as an additional insured, constituted timely notice to the insurer within the meaning of Insurance Law § 3420(a)(3), and as such required a timely disclaimer from defendant (*see JT Magen v Hartford Fire Ins. Co.*, __ AD3d __, 879 NY2d 100 [1st Dept. 2009]; *Bovis Lend Lease LMB, Inc. v Garito Contr., Inc.*, 38 AD3d 260, 261 [2007]; *Bovis Lend Lease LMB, Inc. v Royal Surplus Lines Ins. Co.*, 27 AD3d 84, 89-90 [2005]). Because defendant's disclaimer of coverage, which was based on Industry's allegedly untimely notice, was not issued until seven months later, it was untimely and therefore ineffective (*see Insurance Law § 3420[d]; West 16th St. Tenants Corp. v Public Serv. Mut. Ins. Co.*, 290 AD2d 278 [2002], *lv denied* 98 NY2d 605 [2002]; *Consolidated*

Edison Co. of N.Y. v United States Fid. & Guar. Co., 263 AD2d
380, 381 [1999]; *Thomson v Power Auth. of State of N.Y.*, 217 AD2d
495, 497 [1995]).

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

ENTERED: JULY 7, 2009


CLERK