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Supreme Court, Appellate Division, First Department, New York.

REALM NATIONAL INSURANCE COMPANY,
Plaintiff-Appellant,

v.

HERMITAGE INSURANCE COMPANY, Defendant-Respondent.

June 15, 2004.


Background: Workers compensation carrier brought declaratory judgment action against general liability carrier for contribution toward defense and indemnification of parties' insured in underlying third party action, in which common law and contractual indemnification was sought from insured for liability incurred to insured's employee by reason of personal injuries sustained by employee in course of his employment. The Supreme Court, New York County, [Sherry Klein Heitler, J.](#), granted defendant's motion to dismiss. Plaintiff appealed.

Holdings: The Supreme Court, Appellate Division, held that:

- (1) general liability carrier did not waive reliance upon applicable exclusionary language, and
- (2) disclaimer was not rendered ineffective by general liability carrier's quotation of only part of relevant exclusion.

Affirmed as modified.

West Headnotes

[1] Insurance  **3110(2)**

[217k3110\(2\) Most Cited Cases](#)

General liability carrier did not waive reliance upon applicable exclusionary language, since original disclaimer letter, which clearly cited relied upon exclusion, promptly apprised claimant of grounds upon which disclaimer was predicated with high degree of specificity.

[2] Insurance  **3082**

[217k3082 Most Cited Cases](#)

Disclaimer was not rendered ineffective by general li-

ability carrier's quotation of only part of relevant exclusion, since claim of ineffectiveness was being raised by workers compensation carrier, as coinsurer seeking contribution, not by insured.

****493** [Querrey & Harrow, Ltd.](#), New York ([Crystal Monahan](#) of counsel), for appellant.

Israelson & Gold, Plainview (Jeffrey B. Gold of counsel), for respondent.

[MAZZARELLI, J.P.](#), [ANDRIAS, SULLIVAN, LERNER, GONZALEZ, JJ.](#)

***110** Order, Supreme Court, New York County (Sherry Klein Heitler, J.), entered on or about October 15, 2003, which, in this ***111** action seeking declaratory relief, inter alia, granted defendant's motion to dismiss the complaint, unanimously modified, on the law, to declare in defendant's favor that it is not obligated to defend, indemnify, or otherwise reimburse plaintiff in connection with the underlying personal injury action, and otherwise affirmed, with costs in favor of defendant, payable by plaintiff.

[1][2] Plaintiff workers' compensation carrier sues to compel defendant general liability carrier to contribute to the defense and indemnification of the parties' insured in an underlying third-party action, in which common-law and contractual indemnification is sought from the insured for liability incurred to the insured's employee by reason of personal injuries sustained by the employee in the course of his employment. The subject general liability policy issued by defendant, however, specifically excludes both coverage for bodily injury to an employee of the insured arising out of or in the course of employment, and coverage for "any obligation [of the insured] to share damages with or repay someone else who must pay damages because of the [employee's] injury" (see [Monteleone v. Crow Constr. Co.](#), 242 A.D.2d 135, 673 N.Y.S.2d 408, *lv. denied* 92 N.Y.2d 818, 684 N.Y.S.2d 489, 707 N.E.2d 444; [N. Star Reins. Corp. v. Contl. Ins. Co.](#), 185 A.D.2d 187, 585 N.Y.S.2d 436, *affd.* 82 N.Y.2d 281, 604 N.Y.S.2d 510, 624 N.E.2d 647). Contrary to plaintiff's argument, defendant's disclaimer was not untimely pursuant to [In-](#)

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[surance Law § 3420\(d\)](#), nor did defendant otherwise waive reliance upon the applicable exclusionary language. The original disclaimer letter, which clearly cited the relied upon exclusion, promptly apprised the claimant with a high degree of specificity of the grounds upon which the disclaimer was predicated (cf. [Matter of Aetna Cas. & Sur. Co. v. Rodriguez](#), 115 A.D.2d 418, 496 N.Y.S.2d 956). The disclaimer was not rendered ineffective by defendant's quotation of only part of the relevant exclusion, especially since the claim of ineffectiveness is being raised not by the insured but by a coinsurer seeking contribution (see [**494Tops Mkts., Inc. v. Maryland Cas.](#), 267 A.D.2d 999, 1000, 700 N.Y.S.2d 325).

We modify only to declare in defendant's favor (see [Lanza v. Wagner](#), 11 N.Y.2d 317, 334, 229 N.Y.S.2d 380, 183 N.E.2d 670, cert. denied 371 U.S. 901, 83 S.Ct. 205, 9 L.Ed.2d 164).

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