



K2 Underscores The Power Of Precedent, Law360

By Kevin M. Mattessich and Todd D. Kremin

Law360, New York (March 12, 2014, 2:01 PM ET) — It has long been the law in New York that an insurer does not waive the right to raise policy exclusions in a coverage dispute even if it is contended the insurer initially breached a duty to defend the underlying lawsuit. In a recent victory for the insurance industry, New York Court of Appeals after hearing reargument in K2 Investment Group LLC v. American Guarantee & Liability Insurance Co., (Feb. 18, 2014) the Court of Appeals held that this is still the controlling rule.

The original K2 decision was cited in support of “coverage by estoppel” arguments by policyholders contending insurers were stripped of all rights under a policy once ...