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Using Classification Limits To Deny Coverage In NY, Law360, by Michael Zigelman & Eric Stern

By **Michael L. Zigelman** and **Eric B. Stern**

In a recent decision obtained by Kaufman Dolowich & Voluck, LLP's global insurance litigation group – *Black Bull Contracting, LLC v. Indian Harbor Ins. Co., 23 N.Y.S.3d 59 (1st Dept., 2016) - New York's First Department held that the carrier in question – Indian Harbor Insurance Company – had no duty to defend or indemnify its Named Insured – Black Bull Contracting LLC – in an underlying bodily injury lawsuit, despite the fact that Indian Harbor issued its disclaimer in an arguably "untimely" manner pursuant to the strict disclaimer-timing rules of New York's Insurance Law 3420(d). In reaching their decision, the First Department found that the subject Policy's "Classification Limitation" Endorsement was a condition precedent to coverage, and as such, did not operate as a waivable exclusion, therefore falling outside the scope of New York Insurance Law 3420(d)'s timing requirements.*

This decision will have a significant impact on insurers relying on classification limitation endorsements as a basis to deny coverage, and further modifies the applicability of New York Insurance Law 3420(d).

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