

# THE DAILY RECORD

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## Top 10

### Getting insurance coverage for your client

**1.** Remember the duty to defend is broader than the duty to indemnify and doubts as to the duty to defend usually are resolved in favor of the insured. *Kincaid v. Simmons*, 66 AD2d 428 (Fourth Dept. 1979). *Pow Well Plumbing & Heating v. Merchants Mutual*, 195 Misc. 251 (1949).

**2.** While the insurer generally has the right to select counsel — see *Utica Mutual Insurance Co. v. Cherry*, 45 AD2d 350 (Second Dept. 1974), affirmed 35 NY 2d 791 (1974) — the insurer usually gives up that right when it defends with a reservation of rights since the reservation creates a potential conflict of interest for the attorney defending the case. That is, is its loyalty to the insurance company or to the insured? *Public service Mutual Insurance Co. v. Goldfarb*, 53 NY 2d 392 (1981). *Prashker v. U.S. Guarantee Co.*, 1 NY 2d 584 (1956).

**3.** Insurance companies can estop themselves into coverage by their own inaction. *State v. Fidelity & Casualty Co.*, 416 NY 2d 403 (Third Dept. 1979).

**4.** Put everything in writing from your first Notice of Claim to any follow-up letters confirming conversations.

**5.** When in doubt as to coverage, make a claim as soon as possible, including notice to excess carriers.

**6.** Give notice directly to the insurance company as well as

to the broker.

**7.** A Notice of Disclaimer must have specific grounds under Insurance Law Section 167(8). To disclaim for late notice, the disclaimer letter must state the grounds or they are waived. *General Accident Insurance Group v. Curucci*, 46 NY 2d 862 (1979).

**8.** Savvy plaintiffs' lawyers will plead multiple theories of relief so as to attempt to pick up insurance coverage. You may be able to claim one or more causes of actions covered even if others are not.

**9.** Ambiguities, including exclusionary language, are construed in favor of the insured. The insurance company must establish that its construction or interpretation of the policy is the only construction that can be fairly placed on it. *Bronx Savings Bank v. Weigardo*, 1 NY 2d 545 (1956).

**10.** Do not give extensions or sign tolling agreements without getting permission from your insurance company first.



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