



# BROOKS' BLAST

## ATTENTION TO DETAIL - ENTITY FAILS TO CHANGE ADDRESS WITH SECRETARY OF STATE & LOSES INSURANCE COVERAGE

A recent New York Court of Appeals case, *Briggs Avenue, LLC v. Insurance Corp. of Hanover*, 11 N.Y. 3d 377 is a good reminder of the rule we all live by.... or should live by: ATTENTION TO DETAIL.

In this case, the Court of Appeals acknowledges one of the intents of the 2008 amendment to Insurance Law Section 3420, which “strikes a ... balance, more favorable to the insured” by creating a new requirement that prejudice to the insurer be considered when the insurer disclaims coverage on the basis of inadequate notice. However, the amendment only effects policies issued after January 17, 2009 and the facts in the Briggs case all occurred before then.

The case before the Court involves a plaintiff that was a limited liability company, whose articles of organization designated the “Secretary of State as its agent to receive service of process. The problem is that Briggs moved its office address and did not notify the secretary as required. So, when the suit was begun in July 2003, the first notice Briggs had of it was an April 2004 motion for default judgment. Briggs then gave “prompt” notice to the insurer, but by then it was too late. Under the terms of the insurance policy, notice was to be given “as soon as is practicable.” When the notice is found “practicable” but is not given, prejudice is not a factor, the Court explains, citing the 2005 *Argo* court case.

Because of the 2008 amendment to the insurance law, the holding in Briggs is now somewhat tempered. The same action brought under a policy issued after January 17, 2009 might (but might not) yield a different result. The amendment to the law only means that a court must determine if there is any prejudice to the insurer because of the late notice. If there is, the insurer can still deny coverage.

*The “Blast” is a one to two page blast of information designed to assist financial consultants and other attorneys with estate planning, estate administration and tax information. The “Blast” is produced periodically as we discover information that would be helpful to others in the financial and legal community.*

## WHAT DOES THIS MEAN TO US?

When we are consulting with our entity clients (principally LLC's and corporations), we would be well advised to ask our clients if their filing information is up to date and they are properly registered with the Department of State. Cite the above case and let them know you are only looking out for their best interest. They will thank you for your concern and you will have provided a value added service that will reflect positively on you.

*We would be honored to serve your clients with their estate planning desires and goals. We are available not only at our office, but at yours and the client's home. We serve clients in all eight counties of Western New York and the easterly Finger Lakes region as well.*

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