

Barry Buchman, Jonathan Pressment, Greg Van Houten in NY Law Journal: When Drafting a Pleading Against Your Insurer in New York, Consider Consequential Damages

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PRACTICES Insurance Recovery

For the past decade, the New York Court of Appeals decision in *Bi-Economy Market, Inc. v. Harleystville Insurance Company of New York*, has served as a useful roadmap for policyholders looking to recover consequential damages in connection with claims brought against their insurers who they allege have wrongfully denied their claim. See, e.g., *D.K. Property v. National Union Fire Insurance Company of Pittsburgh, Pa.*, 92 N.Y.S.3d 231 (1st Dep't 2019) (citing *Bi-Economy*). This past January, in *D.K. Property*, the First Department emphasized that the key inquiry in such cases—if not the only inquiry—is whether the consequential damages being sought were foreseeable at the time of contracting. Against that backdrop, now, more than ever, policyholders should evaluate whether they have a claim for consequential damages when drafting a pleading against a breaching insurer. ...

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