

Keyspan East Gast Corporation v. Munich Re America, Inc.

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Court: New York Court of Appeals

Case Number: APL-2016-00236

In the case of indivisible long-tail injury claims that have a latent manifest, the “all sums” approach protects the policyholder from litigating with every insurer that may have liability. In contrast, the “pro rata” approach is a pro-insurer approach that causes more litigation and potentially allows responsible insurers to escape coverage. The “availability rule” serves fundamental principles of fairness because it allocates indivisible liability proportionally among insurers based on their time on the risk, treating the policyholder as a de-facto insurer in any year when it chose to self-insure but not when the policyholder made no such choice because insurance was not available. Under New York precedent, “all-sums” allocation applies when the policy language contemplates that multiple successive insurance policies can indemnify the insured for the same loss. (See Viking Pump).

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