

GL and PL Insurers Must Share Equally for Costs Covered Under Both Policies Despite Differing Policy Limits

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The New York Supreme Court, Appellate Division, applying New York law, has held that a general liability insurer is obligated to provide sole primary coverage to an insured for a risk covered under the insured's general liability and professional liability policies until the \$100,000 self-insured retention of the professional liability policy has been eroded. The court stated that, while the professional liability policy included a \$100,000 "deductible," the policy provided that the policy limit "applies as excess over any deductible amount," and thus the \$100,000 amount constitutes a self-insured retention rather than a deductible. The court further held that all covered costs exceeding the \$100,000 self-insured retention of the professional liability insurer are to be shared equally between the general liability and professional liability insurers. In so holding, the court rejected the general liability insurer's contention that the costs should be split on a pro rata basis pursuant to the respective policy limits, noting that "while the two policies provided coverage for the same insured, the policies did not insure the same risk" as each policy's coverage grant was triggered for separate reasons. *New York State Thruway Authority v. KTA-Tator Engineering Services, P.C.*, 2010 WL 4542153 (N . Y . A pp. Div. N ov. 12, 2010).