Insurance Coverage – General Contractor

SERVICES
Construction Litigation

RELATED ATTORNEYS
Kevin R. Kratzer
Ashley A. Noel

The United States Court of Appeals for the Second Circuit recently upheld the granting of summary judgment in favor of a general contractor represented by Attorneys Kevin R. Kratzer and Ashley A. Noel in a declaratory judgment action. Boyle | Shaughnessy Law represented the general contractor at both the trial and appellate court levels.

This insurance coverage dispute arose out of the collapse of a steel web structure at Yale University's Science Area Chilled Water Plant Shell, in which one employee of a sub-subcontractor was killed and three others were injured. The contract between the general contractor and its subcontractor required the subcontractor to obtain insurance naming the general contractor as an additional insured, and to require all sub-subcontractors it hired to do the same. The contract between the subcontractor and its sub-subcontractor expressly incorporated the contract between the general contractor and the subcontractor, while also requiring the sub-subcontractor to obtain a certificate of insurance naming the general contractor as an additional insured. After the decedent's estate and the three injured parties brought a negligence action against, inter alia, the general contractor and its subcontractor, but not the sub-subcontractor, in Connecticut state court, the sub-subcontractor's commercial general liability insurer brought a declaratory judgment action in the United States District Court for the District of Connecticut, seeking a declaration that it did not have a duty to defend or indemnify the general contractor or the subcontractor in the underlying state court actions. The District Court subsequently granted summary judgment in favor of the general contractor and sub-subcontractor.

On appeal, the Second Circuit found that the general contractor qualified as an additional insured on the sub-subcontractor's policy, rejecting the insurer's argument that the additional insured endorsement required direct contractual privity between the general contractor and the sub-subcontractor in order for the general contractor to qualify as an additional insured. In particular, Attorneys Kratzer and Noel successfully argued that the endorsement, which required that the sub-subcontractor and the general contractor "have agreed in writing in a contract or agreement that [the general contractor] be added as an additional insured on [the] policy," was satisfied because both the general contractor and the sub-subcontractor each agreed in writing in a contract that the general contractor would be added as an additional insured. Moreover, the Second Circuit further agreed with Attorneys Kratzer and Noel that, even if the policy did require direct contractual privity, this requirement was also satisfied, as the contract between the subcontractor and sub-subcontractor expressly incorporated the contract between the general contractor and the subcontractor.

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The Second Circuit further found that coverage for additional insureds was not limited to vicarious liability for injuries caused by the sub-subcontractor. Specifically, Attorneys Kratzer and Noel successfully argued that the inclusion of the phrase "in whole or in part" in the additional insured endorsement demonstrates that the endorsement provides coverage where the injury was caused, at least in part, by the sub-subcontractor. As the underlying complaints implied fault on the part of the sub-subcontractor, the Second Circuit found that the insurer had a duty to defend the general contractor and the subcontractor, and therefore affirmed the District Court's granting of summary judgment in their favor.

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