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**New York Court Of Appeals Holds "Caused By" Language In Additional Insured Endorsement Means "Proximately Caused" And Refuses To Equate Phrases "Caused By" And "Arising Out Of" As They Appear In Additional Insured Endorsements.**

In Burlington Insurance Co. v. NYC Transit Authority, decided June 6, 2017, the New York Court of Appeals held that "where an insurance policy is restricted to liability for any bodily injury 'caused, in whole or in part' by the 'acts or omissions' of the named insured, the coverage applies to injury proximately caused by the named insured." The Court of Appeals further held that the phrase "caused, in whole or in part" does not have the same meaning as the phrase "arising out of" as the phrases appear in additional insured endorsements, and that the latter phrase, "arising out of," is broader than the phrase "caused by." The Court of Appeals accordingly reversed the holding of the Appellate Division, First Department, that found that the two phrases had the same meaning, and held that prior First Department decisions to that effect were wrong.

The Court of Appeals noted that discovery conducted before the underlying summary judgment motions were decided revealed that the additional insured seeking coverage, and not the named insured, was at fault for the injury for which coverage was sought. The Court then held that the phrase "'caused, in whole or in part,' by the 'acts or omissions' of the named insured" means that the injury for which coverage is sought by an additional insured must be proximately caused by the named insured for coverage to exist for the additional insured. Because the injury in question was not proximately caused by an act or omission of the named insured, the additional insured was not entitled to coverage. In addition to holding that the phrase "caused by acts or omissions" does not have the same meaning as the broader phrase "arising out of," the Court held that "proximate cause" and "but for" causation are different. "Proximate cause" refers to "a legal cause," while "but for" causation refers "to a link in the chain leading to an outcome," and is broader than "proximate cause."

The Court of Appeal's decision effects a significant change in New York law because numerous courts had followed the First Department decisions that equated the phrases "caused, in whole or in part" and "arising out of" and broadly interpreted similar additional insured endorsements.

If you would like more information on this decision or on the issue of additional insured coverage under New York law, please contact either Kevin E. Wolff, Esq. or Michael S. Chuven, Esq.

## KINNEY LISOVICZ REILLY & WOLFF PC

Kinney Lisovicz Reilly & Wolff PC represents clients in federal and state courts and handles an extensive variety of matters, including insurance coverage, civil litigation, premises liability, product liability, construction defect, food-borne illnesses, toxic exposure, contract and breach of contract, professional liability, employment litigation, auto and trucking, criminal defense, and appeals.

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