KLRW

KINNEY LISOVICZ REILLY & WOLFF PC

MARCH 27, 2018

Justin N. Kinney
Shareholder
P: (973) 957-2551
justin.kinney@klrw.law

Kathleen J. Devlin
Shareholder
P: (973) 957-2561
kathleen.devlin@klrw.law

New York Court of Appeals Affirms Ruling that Policy Language Controls the Interpretation of Additional-Insured Status.

On March 27, 2018, the New York Court of Appeals decided Gilbane Building Co./TDX Construction Corp. v. St. Paul Fire and Marine Insurance Company, et al. Gilbane Building Co./TDX Construction Corp., a joint venture, was retained by the Dormitory Authority of the State of New York ("DASNY") to serve as a construction manager for the construction of a forensic laboratory for New York City's Office of the Chief Medical Examiner. In a separate contract, DASNY hired Samson Construction Co. ("Samson"), which agreed to obtain general liability insurance that covered "the construction manager," among others, as additional insureds. Samson obtained its liability policy from Liberty Insurance Underwriters ("Liberty"). The Liberty policy contained an "Additional Insured-By Written Contract" clause, which stated that Liberty would cover "as an insured any person or organization with whom you have agreed to add as an additional insured by written contract." (Emphasis supplied).

Samson's excavation allegedly caused an adjacent building to settle, causing significant structural damage beginning in 2003. DASNY sued Samson and the project architect for negligence. The architect initiated a third-party action against Gilbane/TDX, alleging that the construction manager had been negligent in supervising Samson's work. Gilbane/TDX sought defense and indemnification from Liberty as an additional insured under its policy with Samson. Liberty denied coverage, asserting that Gilbane/TDX did not qualify as an additional insured. Gilbane/TDX initiated a coverage action seeking a declaration that Liberty was obligated to provide coverage. Liberty moved for summary judgment, arguing that Gilbane/TDX was not entitled to coverage because it did not have a written contract with Samson to make it an additional insured.

The Supreme Court denied Liberty's motion and declared that Gilbane/TDX was an additional insured under the policy. The court stated that the "Additional Insured-By Written Contract" clause "requires only a written contract to which Samson is a party and found that this requirement was satisfied by Samson's contract with DASNY." The Appellate Division, First Department, reversed, holding that the additional-insured clause clearly and unambiguously required that the named insured execute a contract with the party seeking coverage as an additional insured.

The Court of Appeals affirmed and ruled that "the terms of the policy at issue here require a written contract between the named insured and an additional insured if coverage is to be extended to an additional insured." It also ruled that the endorsement was "facially clear and does not provide for coverage unless Gilbane/TDX is an organization 'with whom' Samson has a written contract."

Likewise, the Court of Appeals rejected Gilbane's argument that extrinsic evidence, such as a sample of certificates of insurance and the contract between DASNY and Gilbane, should be examined. The Court of Appeals stated that extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous.

If you would like more information on this decision or the issue of additional-insured coverage under New York law, please contact Justin N. Kinney, Esq. or Kathleen J. Devlin, 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.

New Jersey Office:
299 Cherry Hill Road, Suite 300
P.O. Box 912
Parsippany, New Jersey 07054
Phone: 973-957-2550
Fax: 973-710-1054

New York Office:
11 Broadway, Suite 615
New York, New York
Phone: 646-741-7332
Fax: 646-690-8772