

Second Circuit Upholds Additional Insured Limitations; Discusses Impact of Certificates of Insurance

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On December 23, 2010, the U.S. Court of Appeals for the Second Circuit upheld a requirement in an additional insured endorsement that the underlying contract must be “executed” prior to the loss in order for additional insured status to be granted.

The court, however, did not grant judgment in favor of the insurer because it found there to be an issue under New York law whether a certificate of insurance issued by the insurer’s agent estopped the insurer from contesting coverage. Because of a split in authority between departments of the New York Appellate Division regarding the impact of certificates of insurance, the Second Circuit certified the following question to the New York Court of Appeals:

In a case brought against an insurer in which a plaintiff seeks a declaration that it is covered under an insurance policy issued by that insurer, does a certificate of insurance issued by an agent of the insurer that states that the policy is in force but also bears language that the certificate is not evidence of coverage, is for informational purposes only, or other similar disclaimers, estop the insurer from denying coverage under the policy?

In 10 Ellicott Square Court Corp. v. Mountain Valley Indemnity Co., the owner and construction manager (“Plaintiffs”) of a commercial building in Buffalo, New York, contracted with Ellicott Maintenance, Inc. (“Ellicott Maintenance”) to partially demolish the building’s interior. Before Plaintiffs signed the construction agreement with Ellicott Maintenance, in which Ellicott Maintenance agreed to provide them with additional insured coverage, an employee of one of Ellicott Maintenance’s subcontractors was injured. Ellicott Maintenance’s primary insurer denied coverage for the claim on the grounds that the additional insured endorsement granted coverage only when “the written contract or agreement [between Ellicott Maintenance and the additional insured] ha[d] been executed...prior to the ‘bodily injury.’”

The district court granted summary judgment to the additional insured, finding that, although the contract was unsigned, the “underlying contract” requirement that Ellicott Maintenance procure insurance had been fully performed and, was thus, “executed”. The Second Circuit disagreed, stating that fulfilling the insurance procurement provision was only partial performance. New York law, rather, requires either the signing of a contract or its full performance for it to be “executed” in this context. Because neither had occurred, the contract had not been “executed”. The Second Circuit, nevertheless, demurred on the question of whether the insurer would be estopped from denying additional insured status because an agent of the insurer had issued a certificate of insurance indentifying the Plaintiffs as such. The court found that there was a split among appellate departments in New York on the effect of a certificate of insurance and, therefore, certified this issue to the New York Court of Appeals.

This case is significant to those insurers that issue additional insured endorsements to New York insureds as it provides insurers further support to uphold the particular requirements necessary for additional

insured coverage to attach. Likely more important, however, is the Court's certification to the New York Court of Appeals of the question addressing the impact of the issuance of a certificate of insurance by an insurer's agent.

We will continue to monitor this case and report on any developments. Should you have any questions regarding this decision, or other issues regarding additional insured coverage, please contact Adam M. Smith or Dennis Stefanitsis.