

Coughlin Midlige & Garland Obtains Summary Judgment for Insurance Carrier in an Additional Insured Declaratory Judgment Action in the Supreme Court of New York

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Karen Moriarty and Patrick Florentino of Coughlin Midlige & Garland LLP recently obtained a grant of summary judgment for an insurance carrier in an additional insured declaratory judgment action pending before the Hon. Paul Marx in the Supreme Court of New York, Rockland County.

The court determined that the insurer had no duty to defend or indemnify the owner of a nationwide chain of retail stores as an additional insured in an underlying personal injury action brought against the retailer and the insurer's named insured, a construction company who had performed certain renovation services at the purported additional insured's retail store several months before an accident. The additional insured endorsement in the insurance policy provided that "Who is an Insured is amended to include as an insured any person or organization who you are required to add as an additional insured on this policy under a written contract or written agreement." While a Master Agreement (the purported written contract or agreement) between the retailer and the contractor contained an additional insured requirement, the Master Agreement also stated that it "applies only to Projects for which a Project Agreement is issued under this Master Agreement and shall not govern other services provided by the Contractor to the Owner." The Project Agreement was not produced in the underlying action or the declaratory judgment action, either in discovery or in opposition to the insurer's summary judgment motion. Accordingly, the court concluded that any claim that a Project Agreement must exist was merely speculation and granted the summary judgment motion and dismissed the declaratory judgment action with prejudice.