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Alert

New York Appellate Division Construes the "Caused By" Language In an Additional Insured Provision Broadly

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On January 19, 2012, the New York Appellate Division, First Department, in *W & W Glass Sys., Inc. v. Admiral Ins. Co.*, 2012 N.Y. Slip Op 305 (N.Y. App. Div. 2012) unanimously affirmed the lower court's decision that the "caused by" language in an additional insured provision must be interpreted as broadly as the "arising out of" language contained in certain additional insured provisions.

This decision will certainly have wide-ranging implications in cases involving additional insured provisions that include the "caused by" language.

In this case, the general contractor sought a declaration that it was entitled to defense and indemnification from the subcontractor's insurer with respect to an underlying personal injury brought by an employee of the subcontractor. The subcontractor purchased a commercial general liability policy that provided the general contractor with additional insured coverage "only with respect to liability caused by [the subcontractor's] ongoing operations performed for that insured [i.e., the plaintiff]." The policy also provided that it "does not apply to liability caused by the sole negligence of the person or organization [named as an additional insured]."

In agreeing with the lower court's decision, the Appellate Division explicitly rejected the insurer's argument that the "caused by" language must be construed more narrowly than the "arising out of" language, holding that the "caused by" language "does not materially differ" from the "arising out of" language. Regarding the insurer's argument, the Appellate Division further held that the "caused by" language does not require negligence on the part of the subcontractor in order to trigger coverage for the general contractor. The Appellate Division found that the claim involved an employee of the subcontractor who was injured while performing the subcontractor's work under the subcontract, thereby triggering additional insured coverage. Thus, notwithstanding that the "caused by" language appears to require a more stringent standard, the Appellate Division applied the same liberal standard it applies to policies with the "arising out of" language in holding that the mere employment status of the injured claimant is sufficient to trigger additional insured coverage. The Appellate Division, therefore, affirmed the lower court's declaration that the insurer had a duty to defend the

general contractor in the underlying action and awarded it past defense costs.

This decision highlights the need for insurers to examine additional insured provisions containing the "caused by" language in the same manner as those containing the "arising out of" language. Unless this decision is overturned by the Court of Appeals, at least with regard to matters pending in the First Department, the "caused by" language cannot be construed as requiring an act or omission on the part of the named insured in order to trigger additional insured coverage.

Should you need more information on these issues, please feel free to contact us.