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Alert

New York Court of Appeals Narrowly Construes "Caused By" Language In Additional Insured Endorsement

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In a highly anticipated decision, the New York Court of Appeals has held that the phrase "liability for 'bodily injury'… caused, in whole or in part, by" "Your acts or omissions," as used in an additional insured endorsement, requires the named insured's act or omission to be a proximate cause of the injury at issue. See Burlington Ins. Co. v. NYC Tr. Auth., 2017 NY Slip Op 04384 (June 6, 2017). In reaching this conclusion, the Court of Appeals expressly disapproved the Appellate Division, First Department's holding that the aforementioned phrase does not materially differ from the broadly-defined phrase "arising out of."

The majority opinion, penned by Justice Rivera, focused on the precise language in the endorsement to support its conclusion. First, the Court held that "caused, in whole or in part" cannot mean "but for" causation because "but for" causation cannot be partial. Thus, the words, in whole or in part, can only modify "proximate cause." Second, the Court held that the endorsement's reference to "liability" confirms that coverage for additional insureds is limited to situations where the insured is the proximate cause of the injury. It reasoned that liability can only exist where there is fault. "That the policy extends coverage to an additional insured 'only with respect to liability' establishes that the 'caused, in whole or in part, by' language limits coverage for damages resulting from [the named insured's] negligence or some other actionable 'act or omission.'" The Court also recognized that the Insurance Services Office's purpose in amending the language of the endorsement to replace the phrase "arising out of" with "caused, in whole or in part," was in response to court decisions broadly construing "arising out of" to encompass coverage for the additional insured's sole negligence. The amendment was designed to preclude that result.

Justice Fahey, who was critical of Burlington's position at oral argument, dissented. In his view, the majority improperly read into the endorsement a legal meaning that did not exist and thus he would have affirmed the First Department's ruling.

The Court's interpretation of the endorsement in the Burlington policy aligns it with the majority of jurisdictions that have interpreted this language and have concluded that it is narrower than the phrase "arising out of." Although the impact of the Court's interpretation will take some time to be

seen, it is now clear that the language “caused, in whole or in part, by,” requires proximate causation on the named insured’s part and that an additional insured whose sole negligence caused the accident will not be entitled to additional insured coverage.