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Alert

New Jersey Appellate Division Confers Additional Insured Status, Albeit Limited to that Portion of the Insured's Work

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In *Comcast of Garden State, LP v. The Hanover Ins. Co.*, Docket No. A-3425-17T4, an unpublished decision decided on July 10, 2019, the New Jersey Appellate Division held that a putative additional insured found partially liable in an underlying personal injury action was an additional insured, but "only with respect to" the insured-contractor's work, and, therefore, was not entitled to coverage for its own negligent conduct.

In the underlying personal injury action, claimant was injured when he tripped over an above-ground cable. JNET Communications ("JNET"), a contractor retained by Comcast of Garden State ("Comcast"), admitted that it installed the cable and, as a result, Comcast was dismissed from the litigation. However, Comcast was reinstated after deposition testimony indicated Comcast had replaced the cable after JNET's initial installation. A jury found Comcast 60% and JNET 40% liable for claimant's injuries.

Comcast sued JNET and Hanover Ins. Co. ("Hanover"), JNET's insurer, seeking defense and indemnity as an additional insured under the Hanover policy. The trial court granted Comcast's summary judgment motion, ruling Comcast was an additional insured entitled to defense and indemnification under the Hanover policy based on the contract between Comcast and JNET. Hanover and JNET appealed.

On appeal, Hanover and JNET argued that Comcast was not an additional insured for its own negligent acts under the plain language of the Hanover policy, but only for the negligent acts attributable to JNET. Comcast countered it was an additional insured under the Hanover policy based on the Comcast-JNET contract.

The Additional Insured language in the Hanover policy provided, in pertinent part, coverage for:

5.a. Any person or organization with who you agreed, because of a written contract, written agreement or permit to provide insurance, is an insured, but only with respect to:

(1) “Your work” for the additional insured(s) at the location designated in the contract, agreement or permit;

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Further, the policy defined “Your work” to mean: (1) “Work or operations performed by you or on your behalf; and (2) Materials, parts or equipment furnished in connection with such work or operations.”

The Appellate Division determined that Comcast satisfied an initial condition by showing JNET contractually agreed to provide additional insured coverage to Comcast. However, the Court stated that this “does not, by itself, render Comcast an additional insured entitled to coverage.” The Court further found the Hanover policy expressly and unambiguously limits coverage to additional insureds “only with respect to…Your Work,” meaning JNET’s “work or operations” or “materials, parts or equipment furnished in connection with such work or operations.” The Court relied, in part, on the jury’s finding of liability for Comcast based on its direct negligence unrelated to JNET’s work and not vicarious liability based on JNET’s work. The Court also distinguished the Hanover policy from other policies containing broader “arising out of” language, which arguably could have resulted in a finding of coverage here.

The *Comcast* decision is limited to the narrow policy language at issue. However, it is a cautionary reminder that naming another party as additional insured does not automatically confer additional insured coverage under a policy, particularly where the other party is found to have some direct negligence.