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Legal ALERT!

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INSURANCE COVERAGE & REGULATION

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Court of Appeals Reaffirms Duty to Defend Additional Insured

The New York Court of Appeals recently affirmed an insurer's duty to defend an additional insured so long as there is a connection between the accident and the named insured's work, even where there are no allegations of negligence against the named insured.

In *Regal Construction Corp. v. National Union Fire Ins. Co. of Pittsburgh, PA*, __ N.Y.3d __, 2010 (June 3, 2010), the Court of Appeals was "once again" asked to determine the obligation of an insurer to defend and indemnify an additional insured for potential liability arising out of the named insured's work. This recent decision follows the Court's opinion two years ago in *Worth Constr. Co., Inc. v. Admiral Ins. Co.*, 10 N.Y.3d 411 (2008), in which the Court limited the scope of an additional insured endorsement and found that an insurer was not obligated to provide coverage to an additional insured contractor.

In *Regal*, the City of New York retained URS Corporation ("URS") to act as the construction manager for a renovation project. URS, in turn, hired Regal Construction Corporation ("Regal") to serve as a prime contractor for general construction at the project. The written agreement between Regal and URS required Regal to procure a commercial general liability insurance policy naming URS as an additional insured. Regal obtained such coverage from Insurance Corporation of New York ("INSCORP"), which included a provision naming URS as an additional insured, but "only with respect to liability arising out of [Regal's] ongoing operations performed for [URS]."

In March 2001, Regal's project manager, Ronald LeClair, was walking through the facility when he stepped onto a floor joist, which allegedly had been recently painted by an employee of URS. The wet paint allegedly caused LeClair to slip and injure himself. He subsequently commenced a personal injury action against the City and URS, but not his employer, Regal. URS sought defense and indemnification from INSCORP based on the additional insured clause, after issuing a reservation of rights to disclaim coverage at a later date. Regal and INSCORP then commenced this declaratory judgment action against URS and its insurer, National Union Fire Insurance Company, seeking a declaration that URS was not entitled to coverage as an additional insured under the INSCORP policy. Supreme Court found in favor of URS, which was affirmed by the Appellate Division, First Department in a 3-2 decision.

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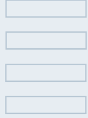

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In a unanimous decision, the Court of Appeals affirmed the finding in favor of URS. After noting the "broad duty to defend" based upon the allegations of the complaint, the Court reiterated that the language limiting coverage for the additional insured to liability "arising out of" the named insured's operations is interpreted to mean "originating from, incident to, or having connection with" the named insured's work. The Court added that there must only be "some causal connection" between the injury and the named insured's work.

Here, the named insured's employee was injured while working on the site. This fact alone is sufficient to "arise out of" the named insured's work and trigger coverage for the additional insured. The Court noted that it was immaterial that the underlying complaint alleged negligence against URS and not Regal. The Court held that this case was factually distinguishable from its 2008 decision in *Worth*, which involved an injury to an employee of a different subcontractor (not the named insured) that occurred after the named insured had already completed its work on the site.

This recent decision does not alter the Court's prior holding in *Worth*, and confirms the Court's broad coverage interpretation for an additional insured where an employee of the named insured is injured on the work site. ■

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