“Additional Insured” Prime Contractor is Entitled to be Defended on Claim Arising out of Insured Subcontractor's Work

By: J. Kent Holland

Where a prime contractor was named as an additional insured on its subcontractor’s commercial general liability (CGL) policy with respect to liability “arising out of” the “subcontractor’s work”, it was held that the insurance company owed a duty to defend and indemnify the prime contractor for claims relating to the prime’s own alleged negligence that led to injuries sustained by subcontractor employees. The allegations were that the prime contractor was negligent for failing to ensure a safe work environment, failing to provide cave-in protection, failing to properly inspect work, failing to supervise independent contractors, and failing to enforce compliance with regulations.

Evidence of any subcontractor negligence was excluded from consideration at the underlying trial because the workers compensation law barred an independent action against the subcontractor. The court further granted a motion in limine to prohibit evidence of subcontractor negligence from being considered. Because this meant the plaintiffs now could only recover against the prime contractor by proving the prime contractor was itself negligent, the carrier denied any duty to defend and indemnify the prime contractor since additional insured coverage only applied to liability “arising out of subcontractor’s work.” (The carrier nevertheless defended the claim through trial). A jury found the prime contractor liable on the theory that it had a nondelegable duty to provide a reasonably safe workplace, and that it had violated that duty by negligent errors and omissions as claimed by the plaintiffs. The jury award was for over $6 million.

The issue on appeal was weather the prime contractor was an “additional insured” for these claims that arose out of the contractor’s nondelegable duty. Both the trial court and appellate court concluded that despite the prime contractor’s own role, it was nevertheless entitled to be considered an “additional insured” since the claims *arose* out of the subcontractor’s work. *Royal Indemnity Company v. Terra Firma, Inc*. 287 Conn. 183, 947 A.2d 913.

Comment: The term “arising out of” seems to be increasingly confusing and ambiguous. When used by contract drafters it is generally intended to be a very inclusive term that is broad enough to catch an extremely wide range of possible claims. For those interested in narrowing what will be covered either by insurance or indemnification clauses, it may be more prudent to replace the term “arising out of” with a plainly worded phrase such as “caused by”. This could be further narrowed down by phrasing it something like the following: “caused by the negligence of the named insured.” This would eliminate confusion as well as a lot of unnecessary litigation over policy intent.

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