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NY's Take On Premises Insurance Policies: What's In A Name?

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A generally accepted rule of construction in New York insurance law is that an insured has an obligation to read its policy and is bound by its terms.[1]

Further, according to the New York Appellate Court, First Department's 2006 decision in National Abatement Corp. v. National Union Fire Insurance Co., "[t]he party claiming insurance coverage bears the burden of proving entitlement, and is not entitled to coverage if not named as an insured or an additional insured on the face of the policy."[2]

Finally, per the New York Appellate Court, Third Department, in Cheperuk v. Liberty Mutual Fire Insurance Co. in 1999, a party is entitled to reformation where "the writing in question was executed under mutual mistake or unilateral mistake coupled with fraud."[3]

Taken together, it would stand to reason that an entity that is not named as an insured on a policy because it did not disclose that it owned the premises insured by the policy is not entitled to coverage in the first instance, absent fraud or mutual mistake.

However, a recent case is indicative of the growing case law in New York that — perhaps surprisingly — holds that naming the correct insured or additional insured is relatively unimportant, at least in certain cases.

In Wesco Insurance Co v. Fulmont Mutual Insurance Co. in June, the New York Appellate Division, First Department, upheld the New York Supreme Court's reformation of a policy to include additional insured coverage for the record owner at the time of the injury, even though the record owner was not listed as an additional insured on the tenant's policy.[4]

The underlying action at issue involved a personal injury occurring at 501 W. 173rd St., New York, New York. The tenant agreed in its lease to name the then-owner of the building, SS2284 LLC, as an additional insured.

SS2284 LLC conveyed the premises to 501 West 173 Street LLC and the tenant's policy was updated to replace SS2284 LLC with 501 West as the additional insured. However, prior to the underlying incident, 501 West conveyed the property to Beyond 501 West SPE LLC. The tenant's policy was not updated to reflect this change.

After the underlying incident occurred, Beyond tendered for coverage, and the tenant's carrier, Fulmont, disclaimed based on the grounds that Beyond was not an insured or additional insured under the policy. Beyond responded that the failure to update the owner's name was an innocent mistake and that the tenant's policy should be reformed.

The Supreme Court held, and the appellate court upheld, that the tenant's policy should be reformed to replace the prior owner with Beyond. The court found that the circumstances clearly established that the tenant's policy was always meant to extend coverage to the building owner as an additional insured, citing cases holding that the name of the insured in the policy is not dispositive if the intent to cover the risk is clear.

In doing so, the court deemed the innocent mistake mutual, even though the insured failed to update the owner's name.

In 1999, the same result was reached by the Third Department in New York Casualty Insurance Co. v. Shaker Pine Inc., in which the carrier issued a builder's risk policy for 1031 Watervliet-Shaker Road, Colonie, New York.[5]

The named insured on the policy, Rosetti Associates, was a nonentity, and the actual owner of the property was Shaker Pine Inc. Shaker Pine was sued by a worker at the premises as a result of a worksite accident. The carrier initially provided coverage to Shaker Pine, but later instituted an action for a declaration of no coverage.

The Third Department held that because the policy was "procured in order to insure against risks attendant to a commercial construction project on a specified parcel of property ... it was the character of the property and project that was proposed to undertaken thereon ... that defined the risk."[6]

In other words, "the identity of the owner was comparatively unimportant."[7] As such, the court held that Shaker Pine was entitled to equitable reformation of the policy "to correct the obvious inadvertent misrepresentation of the named insured."[8]

Similarly, in State of NY v. 913 Portion Road Realty Corp., the New York Supreme Court for Suffolk County held that the owner of a premises, 913 Portion Road, was entitled to reformation of a policy issued to its tenant, which operated a gas station on the premises.[9]

The tenant's policy did not identify 913 Portion Road as an additional insured, but the policy did name Variable Sales Service Inc., the prior owner of the premises. The insurance carrier argued that it was never advised of the change in ownership, and therefore 913 Portion Road held no rights under the policy.

However, the court noted that Merchants Mutual Insurance Co. continued to include the prior owner as an additional insured despite the fact that it no longer owned the property. As such, the court concluded that the intent of the parties was to include the owner of the premises as an additional insured.

The line of cases summarized above, and other cases holding similarly, create an exception to avoid illusory coverage for the owner of a premises. In other words, if a policy is meant to cover accidents at a specific premises, and the owner of the premises is meant to be an insured, the record owner, and not the named owner on the policy, is of paramount importance.

The courts have created a legal fiction that this is a mutual mistake: Of course, the error is unilateral on the side of the insured in failing to advise the insurer of the correct name of the owner of the premises.

However, the rule is that fraud must be present to correct a unilateral error. Here, the error is deemed mutual to fit into a scenario under which reformation is acceptable. The courts of New York, which often interpret policies by their strict terms, have created a practical exception to the general rule that an insured is bound by the terms of its policy.

It should be noted that the latitude expressed by the courts in these cases appears to be limited solely to premises liability. The intent to cover accidents occurring at a specific premises or project must be clear, as must be the intent to provide coverage to the owner of such premises or project.

Absent this intent, it is unclear whether a court will reform a policy to add an owner who was not disclosed to a carrier. Further, when applying for policies covering business operations, as opposed to a specific premises, insureds must be careful to disclose the correct names, because for operations policies, the intent to cover a certain insured is not as readily apparent as in premises liability policies.

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[1] Metzger v. Aetna Ins. Co. , 227 N.Y. 411, 415-16 (1920).

[2] National Abatement Corp. v. National Union Fire Ins. Co. of Pittsburgh, Pa. , 33 A.D.3d 570, 570-571 (1st Dep't 2006). (citations omitted).

[3] Cheperuk v. Liberty Mut. Fire Ins. Co. , 263 A.D.2d 748, 693 N.Y.S.2d 304 (App. Div. 1999).

[4] Wesco Ins. Co v. Fulmont Mut. Ins. Co. , 2023 Slip Op 02600 (1st Dept.)

[5] N.Y. Cas. Ins. Co. v. Shaker Pine , 262 A.D.2d 735, 736-37, 691 N.Y.S.2d 601, 602 (App. Div. 3rd Dept. 1999).

[6] Id.

[7] Id.

[8] Id.

[9] State of N.Y. v. 913 Portion Rd. Realty Corp. , 2012 NY Slip Op 32364(U), ¶ 5 (Sup. Ct.).