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Federal Court Holds that Demolition Exclusion Does Not Apply and Carrier Has Duty to Defend Additional Insureds

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In the recent case of *Travelers Indem. Co. v. Trisura Specialty Ins. Co.*, 2024 U.S. Dist. LEXIS 101953 (S.D.N.Y. June 7, 2024), the court had occasion to consider the classic additional insured fact pattern of a construction accident. Travelers insured the general contractor and provided a defense to the general contractor as well as its wholly owned subsidiary. Trisura insured the subcontractor, who employed the injured worker. Travelers brought suit, alleging that Trisura is obligated to defend and indemnify the general contractor, its subsidiary, the owner of the building (The City of New York), and the tenant.

Trisura denied any obligation to provide coverage due to the application of the “Demolition Exclusion” to the Trisura policy, which provides, in part, that there is no coverage for injury or damage arising out of the demolition of any building or structure which has original ground height in excess of three stories. The accident occurred during the interior demolition of the fifth floor of the building. The court held that the Demolition Exclusion applies only when there is a complete tearing down, razing, or destruction of an entire building. As the accident occurred during interior demolition, the exclusion did not apply.

Turning to the issue of additional insured coverage, the Trisura policy qualifies a person or entity as an additional insured “per written contract.” Trisura did not dispute that the general contractor and City qualify as additional insureds. Trisura did dispute that the tenant and the general contractor’s wholly owned subsidiary so qualified. The contract between the general contractor and Trisura’s insured requires Trisura’s insured to name the general contractor “and Indemnitees” as additional insureds. “Indemnitees” is defined as “all parties the general contractor is obligated by contract or otherwise to indemnify, defend and hold harmless.” Because the contract between the owner and general contractor requires the general contractor to indemnify the tenant, the tenant in turn qualifies as an additional insured under the Trisura policy. Finally, because the wholly owned subsidiary is not an indemnitee, it did not so qualify.

Finally, the court analyzed the priority of coverage provisions in the policies for those entities which qualified as insureds on both the Travelers and Trisura policies. The Trisura policy provides primary coverage to additional insureds. The Travelers policy, however, contains an endorsement that states that coverage provided to an additional insured is excess to any other valid and collectible insurance also providing additional insured coverage. Reading these provisions in tandem, the court found that the Trisura policy is primary to the qualifying additional insureds, and the Travelers policy is excess.

This case illustrates the narrow reading of exclusions in New York, and the contract interpretation needed to both determine additional insured coverage as well as the priority of coverage for those entities so qualifying.