R.I. Supreme Court Holds No Duty to Defend Additional Insured Outside Policy Coverage

Description

The Rhode Island Supreme Court this summer ruled inÂ *Bacon Construction Co., Inc. v. Arbella Protection Ins. Co.,*Â 2017-350 (R.I. June 4, 2019) that a trial court did not err in finding that a subcontractorâ€™s liability insurer wasÂ **notÂ** obliged to provide coverage to the general contractor for personal injuries suffered dby a worker at a construction project, when there was no claim that the subcontractor itself was negligent.

Appellant Bacon Construction, Inc. (â€œBaconâ€•) had been hired as the general contractor for a construction project at the University of Rhode Island. Bacon, in turn, subcontracted certain work to U.S. Drywall. Pursuant to their contract, U.S. Drywall was required to obtain an insurance policy listing Bacon as an additional insured. U.S. Drywall did so, obtaining a policy from Arbella Protection Insurance Company (â€œArbellaâ€•), and naming Bacon as an additional insured under that policy. During site work, a U.S. Drywall employee was severely injured. The employee brought suit against Bacon, alleging that Baconâ€™s negligence was the proximate cause of his injuries. Bacon initially filed a third-party complaint against U.S. Drywall, claiming that their contract required U.S. Drywall to defend and indemnify them.

However, Bacon subsequently dismissed its suit with prejudice, and sought instead to recover indemnification through its â€œadditional insuredâ€• status on the Arbella policy. It did so by filing a declaratory judgment action, seeking a Superior Court ruling that Arbella was contractually obligated to defend and indemnity Bacon, due to Baconâ€™s additional insured status. Arbella argued, conversely, that it had no such duty, because the allegations in the underlying injury suit fell outside the scope of the policyâ€™s coverage â€“ which was limited to negligence inÂ *U.S. Drywallâ€™s*Â acts or omissions. There were no allegations in the underlying injury suit that U.S. Drywall had been negligent in any way. At the Superior Court, Arbella prevailed, prompting an appeal to the Rhode Island Supreme Court.

The Rhode Island Supreme Court held that the additional insured endorsement to the policy limited coverage to those situations where liability was attributable, at least in part, to theÂ *negligence of the named insured*, whereas the allegations in the underlying complaint did not suggest that these injuries were due to any negligence on the part of U.S. Drywall. In so holding, the Court rejected Baconâ€™s argument that the endorsement language that BaconÂ *â€œis an additional insured only with respect to liability for â€¦ injury caused in whole or in part by (1) Your acts or omissions; or (2) the acts or omission of those acting on your behalfâ€Â* (emphasis in original) applies to claims arising from Baconâ€™s own alleged negligence.

â€œYouâ€• and â€œYourâ€• in the policy, the Court found, referredÂ **to the named insured**, U.S. Drywall, only. The endorsement, then, is more accurately read as Bacon â€œis an additional insured only with respect to liability for â€¦ injury caused in whole or in part by (1) [*U.S. Drywallâ€™s*] acts or omissions; or (2) the acts or omission of those acting on [*U.S.Drywallâ€™s*] behalfâ€•.

In the Courtâ€™s view, the mere fact that the employee was injured while working for the named insured did not meet the causation requirement of the additional insured endorsement, and the plain language of the endorsement acted as a limitation on the policyâ€™s scope. The Court also found that Baconâ€™s dismissal of the action against U.S. Drywall was â€œfatal because these actions extinguished any vicarious-liability claims that Bacon could have raised.â€•

The lesson: pay close attention to the specific language regarding the scope of coverage before relying on the coverage. The courts certainly will.

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