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ARTICLE

Who Is An "Additional Insured"? The Devil Can Be in the Details

By Judah Druck – December 26, 2024

In commercial general liability policies, "additional insured" status is often granted via blanket endorsement to entities with whom the named insured was required to provide coverage pursuant to written agreement. Thus, a general contractor may be deemed an "additional insured" under its subcontractor's CGL policy if the agreement between the two required the subcontractor to insure the general contractor. But whether a contract actually requires a party to be added as an additional insured is not always a straightforward question, as seen in a recent decision from the United States District Court for the District of Massachusetts.

In *Costa v. Zurich Am. Ins. Co. et al.*, No. 24-CV-10961-DJC, 2024 WL 5057723 (D. Mass. Dec. 10, 2024), Anthony Costa was fatally injured in a workplace accident while working on a project for MIT. Walsh Brothers, Inc. served as a general contractor, with G&C Concrete Construction, Inc. and Maxim Crane Works, L.P. serving as subcontractors. Costa's estate filed suit against all three entities, alleging joint and several liability for various negligence-based causes of action.

G&C and Maxim separately contracted with Walsh under subcontracts that required "[a]ll Subcontractors shall purchase and maintain . . . insurance as will protect the General Contractor, Subcontractors, Owner, Owners Representative and all affiliated entities from claims . . . which may arise out of or result from the Subcontractors operations . . . ." In turn, the general liability policies Maxim and G&C purchased from Zurich and Hartford, respectively, each included as additional insureds any organization whom they were "required to add as an additional insured under written contract."

After protracted settlement discussions in the underlying matter, Costa filed suit against the insurers, alleging that each breached its duties as an additional insurer with respect to the other's insured (*i.e.,* "Zurich breached its duties with respect to G&C and Hartford breached its duties with respect to Maxim"). Costa argued that the subcontracts' requirement that Maxim and G&C "purchase or maintain . . . insurance as will protect the . . . Subcontractors" triggered their insurance policies because they constituted a "require[ment] to add as an additional insured under written contract." The insurers moved to dismiss.

The court clarified that certificates of insurance "have no legal effect" and "cannot expand [] the requirements in the underlying insurance policies" before considering whether the insurers had improperly withheld coverage to G&C and Maxim as "additional insureds." The court determined that the insurers had not breached their duties. After reviewing the language of each contract, the court noted that the term "subcontractor" was a defined term, and that the definitions provided in one subcontractor's agreement did not list the other: G&C was not included in the definition of "subcontractor" in the Maxim subcontract, and Maxim was not

included in the definition of "subcontractor" in the G&C subcontract. Thus, neither of the subcontracts required that either entity purchase insurance for the other and, in turn, the blanket endorsements in the policies were not triggered.

As further evidence of this conclusion, the court dug deeper into the subcontracts and noted that other entities were specifically named as "additional insureds," but that neither G&C nor Maxim referred to the other—or even included *any* reference whatsoever. The court further highlighted that another section of the agreements required that the subcontractor name "The Contractor, Owner and All related Entities . . ." as additional insureds, but *not* other subcontractors. In the court's view, "[t]he fact that the Contractor and Owner are specifically listed as insured, but additional subcontractors are not, suggests the subcontractors are excluded from this provision." The court then cited to other cases reviewing the subject underlying contract in determining the availability of coverage as an "additional insured." *E.g.*, *Callender v. CSH Realty Corp*., No. 042442, 2007 WL 2705529, at *4 (Mass. Super. Ct. Aug. 31, 2007) (observing that "[a] contract provision that requires the contractor to carry liability insurance does not mean that the owner will be listed as an additional insured, unless the contract expressly so provides") The court therefore concluded that "the Maxim subcontract did not require Maxim to insure G&C and the G&C subcontract did not require G&C to insure Maxim, meaning neither the Zurich nor Hartford policies provided such insurance."

Costa illustrates the need to carefully review the terms of an underlying contract in assessing whether coverage under a blanket additional insured endorsement may be triggered.

Judah A. Druck is a partner with Maslon LLP, Minneapolis.