

HKMP's George Hardin Wins Insurance Coverage Appeal Before The NY Court Of Appeals Involving Additional Insured Status

Lessees, construction contractors, and other persons and entities often agree in contracts to procure insurance policies that afford coverage to other parties as additional insureds. Insurance companies, in turn, have developed a variety of policy provisions addressing the entities to whom the insurer is willing to grant coverage as additional insureds.

The New York Court of Appeals recently considered one such provision in Gilbane Bldg. Co./TDX Const. Corp. v. St. Paul Fire & Marine Ins. Co., No. 22 (Mar. 27, 2018). The policyholder, a foundation and excavation contractor, contracted with a project owner. The contract called for the policyholder to procure additional insured coverage in favor of the project owner and, among others, the project's construction manager. The project owner had contracted separately with the construction manager, and the construction manager was not a signatory to the contract between the policyholder and the owner. The policyholder obtained an insurance policy containing an endorsement affording additional insured coverage to "any person or organization with whom you have agreed to add as an additional insured by written contract but only with respect to liability arising out of your operations or premises owned by or rented by you."

The trial court ruled that the policy did not require privity of contract between the policyholder and the organization to be added as an additional insured, and that the construction manager was insured under the policy because the policyholder had agreed to furnish the construction manager with coverage in a contract. The Appellate Division, First Department reversed, finding that the policy unambiguously required a direct contract between the policyholder and the organization to be added. Gilbane Bldg. Co./TDX Const. Corp. v. St. Paul Fire & Marine Ins. Co., 143 A.D.3d 146 (1st Dept. 2016). The Court of Appeals affirmed the decision of the First Department. The court held that the phrase "with whom" in the endorsement unambiguously required that the policyholder have contracted with the organization to be added. The court rejected the policyholder's argument that enforcement of the policy as written would adversely affect the insurance marketplace, and observed that parties to a construction project were in a position to assess relevant insurance policies and confirm that the coverage procured accorded with the coverage required in the trade contract. The court also rejected the policyholder's reliance upon extrinsic materials such as a certificate of insurance, holding that materials extrinsic to the policy could be considered only if the policy language was ambiguous.

George Hardin of HKMP represented the insurer in the Gilbane coverage litigation.