**INSURANCE COVERAGE**

Churchill Corp. Services, Inc. v. Rockhill Ins. Co., Docket No. A-2887-18T1 (N.J. App. Div. May 6, 2020)

Unpublished Appellate Division decision affirming summary judgment in favor of a commercial liability carrier in a declaratory judgment action. Plaintiff leased various premises to provide national corporate housing services to clients and obtained a commercial liability policy for its business from the defendant. There was a fire at one of the units the plaintiff leased after plaintiff had furnished the unit and after a cleaning company had left the unit. The landlord demanded the plaintiff compensate it for the fire damage. Plaintiff notified that carrier who attempted to investigate the claim and alerted the insured that the carrier’s investigator determined that the cleaning company that had last been in the unit most likely caused the fire, not plaintiff. Nonetheless, plaintiff paid the landlord a discounted amount of the alleged damages caused by the fire in exchange for a release. The insured then filed the declaratory judgment action.

The Appellate Division affirmed the trial court’s finding that plaintiff’s payment for the damages was a voluntary payment as the insured was never sued and no court determined that the insured was responsible for the fire. The policy agreed to “pay those sums that the insured became legally obligated to pay as damages” due to property damage to which the insurance applied. The policy prohibited the insured from making voluntary payments. The policy also did not provide coverage for damage due to assumption of liability in a contract or agreement that the insured would not have in the absence of a contract or agreement. Thus, the court affirmed that coverage only extended to any negligence by the insured, not any contractual liability. The Appellate Division also rejected the insured’s claim that the carrier breached its obligations to the insured in timely investigating and handling the claim with the court noting the carrier never disclaimed coverage nor refused to defend the insured.