

Limitations on Scope Of Coverage Provided To An Additional Insured



By: Holly Marie Wilson

An Ohio Court of Appeals recently held that an additional insured is not entitled to insurance coverage for allegations of independent negligence. Rather, coverage may be limited to only those allegations seeking to hold the additional insured responsible for the named insured's conduct.

Typically, additional insured endorsements are designed to provide insurance for liability arising from the conduct of the named insured. However, until recently, there was an uncertainty regarding the scope of coverage provided to additional insureds in the context of commercial lease agreements. This uncertainty was recently assuaged by Ohio's Eleventh Appellate District.

In **Currier v. Penn-Ohio Logistics**, 186 Ohio App.3d 249, 2010-Ohio-195, the appellate court limited an insurer's duty to defend an additional insured to only those allegations that would make it liable based upon the named insured's conduct, and held the duty to defend does not extend to any claim based on the additional insured's independent acts or omissions.

By way of background, named insureds often include additional insureds by endorsement to the named insured's policy. This is generally done in order to comply with a contract between the named insured and the entity to be added as an additional insured. For example, as in this case, commercial landlords are frequently added to their tenant's insurance policy as additional insureds. The purpose of the additional insured endorsement is to protect the landlord against claims of vicarious liability, i.e., liability based entirely upon the relationship between the landlord and tenant, as opposed to any active negligence on the part of the landlord.

This makes sense for both the named insured and the additional insured. A negligence-free commercial landlord, for instance, invariably is concerned about being held liable for the negligence of its tenant. That landlord should be able to demand coverage through the tenant's insurer because that insurer can offer the coverage either at no additional cost or by a modest increase in premium since covering the landlord's vicarious liability does not increase the insurer's liability exposure.

In **Currier**, Penn-Ohio Logistics ("Penn-Ohio") rented warehouse space from American Steel City Industrial Leasing, Inc. ("American"). As part of the commercial lease agreement, Penn-Ohio caused American to be listed as an additional insured to the commercial general liability policy it purchased from Erie Insurance Exchange ("Erie"). The additional insured endorsement provided coverage to American as follows: "WHO IS AN INSURED *** is amended to include [American] as an insured *but only with respect to liability arising out of [Penn-Ohio's] operations or premises *** rented to [Penn-Ohio].*" (Emphasis added.) The policy also lists the warehouse rented to Penn-Ohio as the insured premises. While the policy was in effect, an unfortunate accident claimed the life of a Penn-Ohio employee. The executor of the employee's estate filed suit alleging negligence against both Penn-Ohio and American. Erie denied a defense to American for its own independent negligence based upon the language of the policy's additional insured endorsement.

The trial court ultimately resolved the dispute by granting Erie's motion for summary judgment, finding the additional insured coverage, which Penn-Ohio obtained for American pursuant to the parties' lease, only covered American for vicarious liability resulting from Penn-Ohio's negligence and not for American's independent acts of negligence. The court found that since the only allegations against American were for its own independent conduct, rather than vicarious liability, American was not entitled to coverage under the policy based upon its status as an additional insured.

On appeal, American argued that the additional insured endorsement provides coverage in two separate situations. It argued the "arising out of [Penn-Ohio's] operations" refers to vicarious liability and the phrase "arising out of premises rented to [Penn-Ohio]" also provides coverage for American's independent acts of negligence occurring on the leased premises. In contrast, Erie argued the additional insured endorsement only insured American for vicarious liability since the endorsement provides that coverage only applies to liability "arising out of" Penn-Ohio's operations or premises. Erie further argues that because the complaint alleged that American was liable only for its independent acts of negligence, rather than vicarious liability, American was not entitled to coverage as an additional insured.

The Eleventh Appellate District agreed, and held that the endorsement was unambiguous and the term "arising out of" relates to both Penn-Ohio's operations and to the premises leased to Penn-Ohio. The appellate court found further support in the fact that while the total premium for Penn-Ohio's insurance policy was \$14,062, Erie charged Penn-Ohio the nominal amount of \$30 to include American as an additional insured. This demonstrated to the court that the parties did not intend to insure American for its independent acts of negligence.

The *Currier* decision is particularly useful to insurers who now have a standard by which to enforce the limited scope of coverage provided to additional insureds. For more information about this decision, or to discuss any insurance coverage issues, feel free to contact any of Reminger's Insurance Coverage Practice Group attorneys.

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