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Contacts

McLean Office

1751 Pinnacle Drive, Suite 1700
McLean, VA 22102

Walter J. Andrews

(703) 714-7642
wandrews@hunton.com

Lon A. Berk

(703) 714-7555
lberk@hunton.com

Washington DC Office

1900 K Street, NW
Washington, DC 20006

Neil K. Gilman

(202) 955-1674
ngilman@hunton.com

John W. Woods

(202) 955-1513
jwoods@hunton.com

Atlanta Office

Bank of America Plaza, Suite 4100
600 Peachtree Street, NE
Atlanta, GA 30308

Lawrence J. Bracken II

(404) 888-4035
lbracken@hunton.com

New York Office

200 Park Avenue
New York, NY 10166

Robert J. Morrow

(212) 309-1275
rmorrow@hunton.com

Charlotte Office

Bank of America Plaza, Suite 3500
101 South Tryon Street
Charlotte, NC 28280

Dana C. Lumsden

(704) 378-4711
dlumsden@hunton.com

*Erin Niedzielski-Eichner of the firm's
McLean office authored this Alert.*

Nevada Supreme Court Finds that Additional Insured Endorsement Provides Coverage for the Independent Negligence of the Additional Insured

In *Federal Insurance Co. v. American Hardware Mutual Insurance Co.*, No. 46275 2008 Nev. LEXIS 38 (Nev. 2008), the Nevada Supreme Court held that an additional insured endorsement in a general liability policy provides coverage for an injury caused by the independent negligence of the additional insured as long as the loss arises out of the named insured's operations and is performed for the additional insured's benefit.

Factual Background

Clarklift-West, Inc. ("Clarklift"), an industrial machinery distribution and repair company, was insured by American Hardware Mutual Insurance Company ("American Hardware"). Clarklift contracted with Southern Wine and Spirits of America, Inc. ("Southern Wine") to provide maintenance and repair services for Southern Wine's warehouse equipment. As part of the contract, Clarklift agreed to add Southern Wine as an additional insured on its American Hardware policy, but "only with respect to liability arising out of [Clarklift's] ongoing operations performed for [Southern Wine]."

While repairing a conveyor belt, a Clarklift employee was injured when he slipped on a piece of cardboard negligently left on Southern Wine's floor. The employee sued Southern Wine, and Southern Wine tendered the claim to American Hardware on the basis of its additional insured

status. American Hardware refused the tender, claiming that it did not insure the independent negligence of Southern Wine, and Southern Wine then tendered the claim to its own insurer, Federal Insurance Co. ("Federal"). Federal and Southern Wine sued for a declaratory judgment that American Hardware's additional insured endorsement did not limit coverage to Southern Wine's vicarious liability for Clarklift's acts, and American Hardware was therefore obligated to defend Southern Wine in the underlying negligence suit.

The Court's Decision

The Supreme Court of Nevada addressed the following certified question from the United States District Court for the District of Nevada: "[w]hether, under Nevada law, an additional insured endorsement provides coverage for an injury caused by the sole independent negligence of the additional insured?" *Id.* at *1. Answering in the affirmative, the court concluded that, "unless the contrary intent is demonstrated by specific language excluding or limiting coverage for injuries caused by the additional insured's independent negligence, there is coverage." *Id.* at *1-2.

The Court reached this conclusion by invoking the principle that ambiguous provisions in an insurance policy are construed against the insurer. According to the Court, the clause "arising out of [Clarklift's]

ongoing operations” was “unclear as to whose negligence [was] covered and whose negligence [was] excluded, [thus]. . . the endorsement must be read to cover Southern Wine for any negligent acts performed by it that give rise to liability in the [underlying] action.” *Id.* at *6. Furthermore, under Nevada law, the phrase “arising out of” is interpreted broadly in the insurance context. *Id.* at *15 (discussing the phrase “[i]n light of our rule to broadly construe insurance policies in favor of coverage.”)

The Court was not persuaded by American Hardware’s argument that the clear intent of the parties was to cover only Southern Wine’s vicarious liability because Southern Wine carried its own insurance with Federal. The Court found no evidence in the record that such an agreement had been reached, nor that there were any industry customs or usages that might reflect an understanding that only vicarious liability would be covered. *Id.* at *14.

Going forward, the Court recommended that insurers include in their additional

insured endorsements “explicit language that would exclude particular causes of losses suffered,” if they do not intend to provide coverage for the independent negligence of the insured. *Id.* at *20.

Implications

With *Federal Insurance Co. v. American Hardware Mutual Insurance Co.*, Nevada joins the majority of jurisdictions in resolving the question of coverage for independent acts of negligence in favor of the additional insured.

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