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NEWS & EVENTS

August 23, 2023

Traub Lieberman Partner Eric D. Suben and Associate Laura Puhala Win Summary Judgment in Favor of Insurer, Determining it has No Duty to Defend

Related Attorneys: Eric D. Suben

In a declaratory judgment action brought before the United States District Court, Eastern District of New York, Traub Lieberman Partner Eric D. Suben and Associate Laura Puhala won summary judgment in favor of Plaintiff Foremost Signature Insurance Co. ("Foremost"), obtaining a declaration that it has no obligation to defend or indemnify Defendant 170 Little East Neck Road LLC ("Little East") in an underlying state court personal injury action.

In the underlying action, a self-employed financial advisor leasing a suite for her business on the second floor of the property at 170 Little East Neck Road (the "Property"), sued Little East in New York Supreme Court, Suffolk County, alleging injuries resulting from slipping on ice on a walkway near an exterior door at the Property.

The underlying plaintiff was the named insured under the Foremost policy. Little East sought coverage pursuant to a lease requiring plaintiff to procure additional insured coverage for the lessor for claims occurring upon, in, or about the "Demised Premises." Foremost disclaimed coverage on the ground that the walkway abutting the parking lot was not part of the "Demised Premises," as defined in the lease. Moreover, while the lease could qualify as an "insured contract" under the Foremost policy, such coverage would apply only with respect to liability "arising out of the ownership, maintenance, or use of that part of any premises leased to you, owned or used by you." The lease allocated no contractual responsibility for the walkway to plaintiff, and the facts demonstrated that the lessor assumed all responsibility for and control of the walkway.

In the summary judgment practice, Little East argued that it qualified for coverage because the slip-and-fall arose out of the plaintiff's operations, work, or facilities owned or used by her at the Premises. TLSS successfully argued that the slip-and-fall on a walkway poorly maintained by the lessor did not arise out of plaintiff's operations or work as a financial consultant, and that there could be no coverage for any "facility" for which plaintiff had no contractual or legal responsibility. The court agreed in the magistrate judge's Report and Recommendation ("R&R") finding that the walkway did not constitute a "bargained-for risk" under the Foremost policy.

Although Little East objected to the R&R, the district judge rejected the objections, adopting the R&R in full, and entered a declaratory judgment in favor of Foremost, finding that Foremost had no duty to defend or indemnify Little East in connection with the underlying action.