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New York Court Holds No Additional Insured Coverage Where Loss Not Proximately Caused BY Named Insured's Negligence

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In its recent decision in *Pioneer Cent. Sch. Dist. v Preferred Mut. Ins. Co.*, 2018 N.Y. App. Div. LEXIS 6621 (N.Y. App. 4th Dep't Oct. 5, 2018), the New York Appellate Division for the Fourth Department had occasion to visit the "proximate cause" issue for additional insured coverage raised by the Court of Appeals in *Burlington Ins. Co. v NYC Transit Authority*, 57 N.Y.S.3d 85 (N.Y. 2017).

J&K Kleanerz contracted to perform janitorial services for the Pioneer Central School District. The contract required that Kleanerz name Pioneer as an additional insured under its general liability policy and that it indemnify Pioneer for any harms arising or resulting from any act, omission, negligence or misconduct. At issue was coverage for a claim brought against Pioneer by an employee of Kleanerz who alleged that she slipped and fell on ice in a school parking lot after she had exited the school upon completion of her shift for the day.

Pioneer sought additional insured status for the suit under Kleanerz's general liability policy, which contained an endorsement extending additional insured status to persons or entities, where required by written contract, for injuries "caused, in whole or in part" by Kleanerz's acts, errors or omissions. Citing to the Court of Appeals' 2017 decision in *Burlington*, the court observed that the appropriate standard for determining additional insured status under comparable wording is whether the insured was the "proximate cause" of the injury, not merely a "but for" cause.

The court held that Pioneer failed to establish this proximate cause requirement since Kleanerz had no responsibility for clearing snow and ice from the school's parking lot, and therefore was not the proximate cause of the accident. In reaching this decision, it rejected Pioneer's argument that Kleanerz caused the accident by instructing the injured employee to exit the school through a particular door near the parking lot. The court reasoned that exiting through that particular door may have allowed for the accident to happen, but it was not the cause of the accident. In other words, plaintiff's use of that particular door was a "but for" cause of the accident, but it was not the proximate cause of the accident.

Based on this finding, as well as its conclusion that Kleanerz' contractual indemnity obligation was not triggered by the accident, the court concluded that Preferred Mutual, as the general liability insurer of Kleanerz, had no indemnity obligation to Pioneer, and that as a consequence, it could have no defense obligation either.