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Traub Lieberman Partners Eric D. Suben and Craig Rokuson Secure Summary Judgment for Insurer in Coverage Dispute Regarding Timeliness of Disclaimer

Related Attorneys: Craig Rokuson

Traub Lieberman partners Eric D. Suben and Craig Rokuson prevailed on a motion for summary judgment, resulting in a judicial declaration of no coverage under a commercial general liability policy issued to a contractor who contracted with underlying plaintiff's employer. The carrier denied coverage to its named insured under an independent contractor's exclusion, and in doing so, copied all other parties to the underlying lawsuit, including certain ownership entities claiming additional insured status, and stated that coverage was denied to "any other person or entity who could qualify as an insured or additional insured."

The ownership entities conceded the application of the independent contractor's exclusion and argued that the denial letter was untimely under New York Insurance Law, making two arguments that were rejected by the court. First, the ownership entities argued that because they were carbon copy recipients, the letter was not effective to advise of the denial of coverage. The court rejected this argument and adopted Traub Lieberman's argument that receipt of a copy of a disclaimer letter is sufficient notice for an additional insured. Second, the ownership entities argued that the response to a subsequent tender, sent months after the initial denial letter that copied the ownership entities, was untimely. The court, citing a case in which Traub Lieberman also served as counsel, rejected that argument as a matter of law, noting that a disclaimer of coverage issued prior to a tender is valid. As such, the court held that the insurer's disclaimer was timely as a matter of law and complied with New York Insurance Law in all respects.