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Traub Lieberman Partner Craig Rokuson Secures Dismissal for Insurer in Coverage Dispute Regarding Action Over Exclusion

Related Attorneys: Craig Rokuson

Traub Lieberman partner Craig Rokuson prevailed on a motion to dismiss, resulting in a judicial declaration of no coverage under a commercial general liability policy issued to a contractor which employed the underlying plaintiff. The carrier denied coverage to its named insured and all other potential insureds under an Action Over Exclusion, which replaces the standard Employer's Liability Exclusion in its entirety and bars coverage for claims for bodily injury to employees of the named insured.

The named insured argued that the exclusion did not apply to the general contractor and owner of the construction site, but the court rejected this argument, citing the five cases mentioned in Traub Lieberman's briefing, which hold that under the Action Over Exclusion, coverage is barred to all parties seeking coverage when the injury at issue is to an employee of the named insured under the policy. Further, the court adopted Traub Lieberman's argument that the Action Over Exclusion, in replacing the Employer's Liability Exclusion in its entirety, does not retain any exceptions to the exclusion (including an "insured contract"). Finally, the court rejected the named insured's argument that the Action Over Exclusion is ambiguous because there could be multiple named insureds under the policy, noting that there is only one named insured under the policy at issue, the entity that employed the injured worker.