TRAUB LIEBERMAN

NEWS & EVENTS

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Traub Lieberman Attorneys Eric D. Suben and Vito John Marzano Obtain Dismissal of Insurer “Bad Faith” Claim

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The named insured operated a restaurant as a tenant in a commercial building in Brooklyn, New York, under a lease identifying the demised premises as the “interior” of the building and reserving responsibility for the exterior to the landlord. The landlord was named as an “additional insured” in an endorsement limiting such coverage to “that part of the premises leased to [the named insured].” An employee of the named insured sued the landlord, claiming injury when a ladder slipped on the sidewalk outside the building. The landlord tendered the claim for “additional insured” defense and coverage, and the insurer offered to defend under a reservation of rights because based on the lease, the incident on the sidewalk was outside the scope of “additional insured” coverage.

The landlord rejected the proffer of a defense under reservation and sought a judicial declaration that the failure to offer an unreserved defense and indemnity constituted a breach of the insurance contract, adding a separate count alleging insurer “bad faith.” Traub Lieberman attorneys Eric D. Suben and Vito John Marzano filed a pre-motion answer to dismiss the “bad faith” count, arguing that the factual allegations offered in support of such claim were identical to those asserted for the “breach of contract” count and as such insufficient to state a claim for “egregious tortious conduct” constituting “bad faith.” The landlord opposed and cross-moved for leave to re-plead the “bad faith” claim.

The court accepted Traub Lieberman’s arguments, holding that the “bad faith” claim failed on two grounds: 1) it was duplicative of the landlord’s “breach of contract” count; and 2) there is no independent cause of action under New York law for an insurer’s failure to fulfill its contractual obligations. The court further denied the landlord’s cross-motion to amend, ruling that where the insurer agreed to defend, the bare allegation of its “knowingly and willfully false” grounds for refusing to indemnify relate to the performance of contractual obligations and not a separate tort duty.