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# New York Court Applies Additional Insured Standards to Find Breach of Contract to Procure Insurance

BY:

In *Live Nation Worldwide, Inc. et al. v. Best Buy Stores, L.P.*, 2020 N.Y. Slip Op. 50830(U), 2020 WL 4197440 (N.Y. Co. July 20, 2020), the court found a breach of the insurance procurement clause in a Sponsorship Agreement between Live Nation (the manager and operator of Jones Beach Theater in Nassau County, New York) and Best Buy for concert sponsorship at Jones Beach Theater, where Best Buy's insurer denied Live Nation's tender because the underlying injury was caused by the acts or omissions of Live Nation's employee, and thus outside the scope of the coverage based on an exception to the Sponsorship Agreement indemnity clause which likewise limited the available coverage.

Best Buy entered into an agreement with Live Nation that afforded Best Buy the right to have a vendor booth to conduct interactive promotional activity at the theater. Best Buy hired Mark Perez to either construct or improve the design of the booth. While construction/improvement of the vendor booth was underway, Perez was standing on top of the first floor of the booth when a forklift driven by a Live Nation employee hit the structure, causing Perez to fall to the ground and suffer bodily injury. Perez sued Live Nation.

Live Nation tendered its defense and indemnity to Best Buy's insurer, which denied additional insured coverage because the driver was Live Nation's employee, thus the incident fell within an exception to the Sponsorship Agreement indemnity clause for claims caused by the acts or omissions of Live Nation's employee and, consequently, outside the coverage. Live Nation commenced a third-party action against Best Buy, alleging breach of contract for failure to procure the insurance required under the Sponsorship Agreement. Live Nation argued that the additional insured endorsement in the Best Buy policy did not satisfy the contractual obligation to provide coverage for injury claims "arising from" Best Buy's operations.

The court agreed, reasoning that "arising from" "refers to a link in the chain leading to an outcome ...and not all such causes result in liability, in contrast to 'proximate cause' [which] refers to a 'legal cause' to which the court has assigned liability." In this regard, the court cited *Burlington Ins. Co. v. NYC Tr. Auth.*, 29 NY3d 313, in which the New York Court of appeals held that that "caused, in whole or in part, by your acts or omissions" requires proximate causation. Best Buy argued that the interpretation of "arising from" wording in *Christ the King Regional High School v. Zurich Ins. Co. of N. Am.*, 91 AD3d 809 (2nd Dept.) lv denied 19 NY3d 806, warranted a different result. However, the court rejected that argument based on a factual distinction between what constituted the "Sponsor's operations" under Best Buy's contract and the subcontractor's "operations" in *Christ the King*, finding that the additional insured coverage was not triggered in the latter case based on its unique facts.

The *Live Nation* decision is notable because of its holding that breach of a contract to procure insurance may be found based on the interpretation of "arising out of" wording by New York courts in the context of additional insured endorsements.