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Traub Lieberman Partners Greg Pennington and Craig Rokuson Obtain Summary Judgment for Carrier Holding That Homeowners Loading Garbage Were Not Using Garbage Truck

Related Attorneys: Gregory S. Pennington, Craig Rokuson

Traub Lieberman partners Greg Pennington and Craig Rokuson recently obtained summary judgment for assurance carrier in the Superior Court of the State of New Jersey, Burlington County. The underlying action involved a sanitation worker who was injured while reaching into garbage pail placed at the curb of a homeowners' home. The homeowners allegedly placed sharp can in a bag and then wheeled the pail to their curb. The next day, the sanitation worker was collecting trash when he was injured.

The homeowners sought coverage under the auto policy issued to the sanitation worker's employer who owned the garbage truck. The auto policy qualifies a person or entity as an insured "while using with your permission a covered 'auto' . . ." The homeowners argued that bringing trash to the curb constitutes use under New Jersey's "complete operations" standard for loading and unloading. However, the court adopted Traub Lieberman's arguments that the homeowners would only be insureds "while" using the auto, and that bringing trash to the curb the night before pick up did not satisfy the temporal requirement that "while" signifies. The court also adopted Traub Lieberman's argument that the homeowners did not present any evidence to meet their burden that the "use," if any, was with the truck owner's permission. As such, the court granted summary judgment dismissing the carrier from the case.