TRAUB LIEBERMAN

INSURANCE LAW BLOG

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New York Appellate Division Reverses Denial of Landlord's Additional Insured Tender

BY:

In *Wesco Insurance Co. v. Travelers Property & Cas. Co. of America*, 2020 WL 6572489 (1st Dep't Nov. 10, 2020), the New York Appellate Division found that a commercial landlord was owed additional insured coverage in connection with an incident in which a plaintiff slipped and fell on the sidewalk while exiting the leased premises.

The tenant, Capital One, was the named insured in a CGL policy issued by Travelers. The policy added the landlord as an additional insured, but "only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to [Capital One] and shown in the Schedule." The lease defined the demised premises to include the building and "all appurtenances."

Travelers denied the landlord's tender on the basis that the sidewalk did not constitute "that part of the premises leased to" Capital One. In the ensuing declaratory judgment action brought by Wesco (the landlord's insurer), the court granted Travelers' motion for summary judgment on this ground.

The Appellate Division reversed, holding that the underlying action arose from plaintiff's using the sidewalk to exit the bank building, constituting "use of that part of the premises leased" to Capital One.

With respect to Travelers' counterclaim, the Appellate Division held that Wesco had no contribution or indemnity obligation to Travelers. In this regard, the court reasoned that even if the lease entitled Capital One to contractual defense and indemnity for the landlord's negligence, Capital One would not be entitled to a defense under the Wesco policy because there was a conflict between the interests of the landlord and Capital One. Travelers also was not entitled to seek contribution from the landlord based on New York's anti-subrogation rule, which holds that an insurer may not subrogate against its own insured (i.e., the landlord in its capacity as an additional insured under the Travelers policy).

The decision is notable for addressing the fact-specific nature of determining additional insured coverage for sidewalk-based claims and for the court's practical application of the anti-subrogation rule in this context.