TRAUB LIEBERMAN

NEWS & EVENTS

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Traub Lieberman Partner Jonathan Harwood Obtains Summary Judgment Determining Insurer Has No Duty to Defend or Indemnify

Related Attorneys: Jonathan R. Harwood

Traub Lieberman Partner Jonathan Harwood obtained summary judgment in favor of the Plaintiff determining that it had no duty to defend or indemnify an insured in a personal injury action, in a case brought in the Eastern District of New York.

The Plaintiff, an insurance provider ("the Insurer"), issued a General Commercial Policy (the "Policy") to the Defendant, a commercial property owner (the "Property Owner"). In the underlying action, a former employee (the "Employee") of a concrete vendor sued the Property Owner, and others, in New York Supreme Court, Queens County, for an injury that occurred on the street in front of the Property Owner's premises during the course of repairs of sewer pipes that serviced the Property Owner's premises.

The Insurer had issued a Commercial General Liability policy to the Property Owner that contained a coverage limitation stating the policy provided "lessor's risk only" coverage. In seeking summary judgment, Mr. Harwood argued that, pursuant to the lessor's risks limitation, the Policy only provides defense and indemnification coverage for tort claims by tenants for property damage or bodily injury sustained while on the insured premises. The Property Owner claimed that the term "lessor's risk only" is undefined and ambiguous and that the Policy covered the damages at issue in this instance because the sewer work was performed to maintain the Property Owner's premises.

In granting summary judgment, the court held, after a review of the facts and applicable law, that the term "lessor's risk" has a "specialized meaning that limits insurance coverage to damages sought by property tenants, or at the very least to injuries suffered on the landlord's property." The court then held that, since it was clearly established that the area where the incident occurred was not owned by the Property Owner, and the Employee was not a tenant of the premises at the time of the injury, the claim was not covered under the Policy and the Insurer had no duty to defend or indemnify the Property Owner in the personal injury action. Therefore, the Plaintiff's motion for summary judgment was granted.

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