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NEWS & EVENTS

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Traub Lieberman Partner Eric D. Suben Obtains Federal Second Circuit Affirmance of Summary Judgment in Insurer's Favor

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In the underlying action, a property owner hosting a motorcycle rally was sued after a motorcycle collided with an auto near the entrance to the premises, injuring the cyclists. The cyclists sued the property owner, among others, alleging failure to supervising traffic on the adjoining roadway. The property owner tendered the claim under its CGL policy, which was endorsed with an "absolute auto exclusion," precluding coverage for claims "arising out of or resulting from the ownership, maintenance, use or entrustment to others of any…auto." The CGL insurer disclaimed coverage based on the endorsement.

In the ensuing coverage litigation, Traub Lieberman represented the insurer, and moved for summary judgment arguing that the "absolute auto exclusion" was dispositive of coverage on the facts alleged, citing case law from New York state courts enforcing similar exclusions to preclude coverage for multi-vehicle accidents. The insured argued in opposition that the outcome should be controlled by *Essex Insurance Company v. Grande Stone Quarry, LLC*, 82 A.D.3d 1326, 918 N.Y.S.2d 238 (3rd Dep't 2011), in which the court declined to apply such exclusion in the case of a single-vehicle accident caused by a dangerous condition of the insured's premises. The federal district judge disagreed with the insured's argument in this regard, granting Traub Lieberman's motion for summary judgment in favor of the insurer.

The insured appealed to the United States Court of Appeals for the Second Circuit, arguing that the district court erred in not following *Grande Stone Quarry*. In support of this argument, the insured posited that the decision of New York's Third Appellate Department was controlling, as the federal court was situated within its geographic ambit; that the "absolute auto exclusion" was rendered ambiguous by the presence of the standard auto exclusion in the coverage form; and that the cases Traub Lieberman cited in support of summary judgment should be distinguished.

Following oral argument, the Second Circuit issued a per curiam decision affirming summary judgment for Traub Lieberman's client. In doing so, the court specifically ruled that the "absolute auto exclusion" is unambiguous as applied to the facts of the underlying case, and rejected the insured's reliance on *Grande Stone Quarry*, finding that case did not specifically address whether the "absolute auto exclusion" unambiguously extinguishes liability coverage as to third parties injured *by another third party's vehicle*. Rather, the court found that the district judge had properly followed other intermediate appellate decisions of the New York state courts (cited by Traub Lieberman) finding such exclusion unambiguous on similar facts involving multi-vehicle accidents. Indeed, the court found the exclusion at bar even clearer than those in the reported decisions based on the clarifying proviso that it "applies even if the claims against any insured allege negligence . . . in the supervision . . . or monitoring of others by that insured, if the occurrence which caused the bodily injury . . . involved the . . . use . . . of any . . . auto." Such supervision and monitoring constituted the precise predicate alleged for the insured's liability in the underlying action.

The court also considered and rejected the insured's argument that the "absolute auto exclusion" is rendered ambiguous by the presence of the standard auto exclusion in the coverage form, stating in this regard that where an exclusion is "deleted and replaced" by endorsement, the policy must be read as if the standard wording does not appear.