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New Jersey Federal Court Holds That Purported Additional Insured's Third-Party Complaint Allegations Against Named Insured Must Be Considered in Analyzing Duty to Defend Purported Additional Insured

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American Fire & Casualty Co. v. American Family Home Insurance Co., 2023 U.S. Dist. LEXIS 88771 (D.N.J. May 22, 2023)

On May 22, 2023, the United States District Court for the District of New Jersey held that a purported additional insured's third-party complaint allegations against the named insured must be taken into account when evaluating the duty to defend the purported additional insured in an underlying liability action. American Fire's insured, Hall Construction, was a purported additional insured under a general liability policy issued to Hall's subcontractor, Trematore Plumbing, insured by American Family. The relevant endorsement in the American Family policy conferred additional insured status upon Hall for bodily injury "caused, in whole or in part, by" Trematore's acts or omissions. The injured plaintiff was a Trematore employee who sued only Hall due to the applicable workers compensation bar. Hall commenced a third-party action against Trematore, alleging that the injuries were proximately caused by the subcontractor. American Family argued that, in analyzing Hall's additional insured status, the insurer need only consider the plaintiff's allegations against Hall (which apparently omitted reference to Trematore) and that Hall's allegations against Trematore were irrelevant. The court agreed with American Fire, applying New Jersey law that an insurer must consider facts outside the plaintiff's complaint in analyzing coverage. In this regard, the subcontractor's insurer argued that Hall engaged in impermissible "self-help" on its coverage claim under the American Family policy by filing the third-party complaint against Trematore. The court dismissed this argument, commenting "[w]hether they are or not is irrelevant" under the broad duty to defend scope.