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INSURANCE LAW BLOG

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New Jersey Federal Court Holds That Insurer Had Duty to Defend Additional Insured Against Claims of Direct Negligence Under "Caused, In Whole Or In Part, By" Additional Insured Endorsement

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Navigators Specialty Insurance Co. v. Citizens Insurance Co., 2024 U.S. Dist. LEXIS 117403 (D.N.J. July 3, 2024)

July 3, 2024, the United States District Court for the District of New Jersey, applying New Jersey law, held that an additional insured endorsement applicable to liability "caused, in whole or in part, by" the named insured's acts or omissions conferred additional insured status for allegations of direct liability for purposes of the duty to defend. A subcontractor's employee sued the general contractor for injuries sustained in a construction accident. The complaint alleged that the general contractor was liable due to its own acts of negligence, not as a result of the subcontractor's negligence. The subcontractor's insurer refused to defend or indemnify the general contractor under the "caused, in whole or in part, by" additional insured endorsement in the subcontractors' policy, contending that the endorsement conferred additional insured status only for claims alleging that the general contractor was vicariously liable for the subcontractor's negligence. After noting that there was no New Jersey Supreme Court authority on the issue, the court predicted that the New Jersey high court would apply the endorsement to confer additional insured status upon the general contractor for allegations of direct negligence in addition to vicarious liability. The court observed the two trial court decisions that broadly applied the endorsement and the one appellate decision that narrowly applied it. The court also took note of *American Fire & Casualty Co. v. American Family Home Insurance Co.*, 2023 U.S. Dist. LEXIS 88771 (D.N.J. May 22, 2023), which broadly applied the endorsement. The court also noted that "[t]he overwhelming majority" of authority nationwide broadly applies the endorsement to apply to claims of direct negligence. The court declined to address the duty to indemnify and ordering of insurance on the basis of ripeness, given that there was no judgment yet in the underlying liability action.

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