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Federal Court Upholds Privity Requirement in Additional Insured Endorsement; Finds No Equitable Estoppel

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In the recent case of *Associated Indus. Ins. Co. v. Sentinel Ins. Co.*, No. 23-CV-10400 (MMG), 2025 U.S. Dist. LEXIS 114423 (S.D.N.Y. June 16, 2025), the United States District Court for the Southern District of New York enforced a privity requirement on an additional insured endorsement in the landlord/tenant context. Further, even though previous denials of coverage dating back almost three years did not mention the privity requirement, due to the fact that the denying insurer had never provided coverage and had all times denied an obligation to provide coverage, no equitable estoppel was found.

A construction accident occurred at premises owned by Central Area Equities Associates LLC (“Owner”), insured by Associated. Associated, on behalf of Owner, tenered to Sentinal, who issued a policy of insurance to Venchi US Inc. as the sole named insured (“Parent Company”). By virtue of a “Who is An Insured” provision in the Sentinal policy, the tenant at the premises, Venchi 2 LLC (“Tenant”) qualified as an insured by virtue of being controlled, more than 50%, by Parent Company. The Sentinal policy also qualified as an additional insured “any person or organization from whom you lease land or premises when you have agreed, in a written contract or written agreement, that such person or organization be added as an additional insured on the Sentinal policy.” The Sentinal policy defined “you” as the named insured under the policy.

The court found that because the named insured was Parent Company, and not Tenant, a subsidiary and separate legal entity, there was no lease between “you” (i.e., Parent Company) and Owner, sufficient to confer additional insured coverage on Owner.

The court also dismissed Associated’s argument that Sentinal was equitably estopped from raising the defense of lack of additional insured qualification, because, in prior communications going back almost three years, Sentinal had raised only coverage defense that have no merit. The court found that because Sentinal had never provided coverage, and had denied coverage from the offset, there could be no estoppel, as estoppel may not create coverage where none exists.

The case illustrates the New York requirement for privity of contract between a tendering additional insured and the named insured when the phrase "when you have agreed," or similar wording, is used in an additional insured endorsement. The case is one of the few to enforce the language in the context of a lease, rather than a construction contract. The case also illustrates that equitable estoppel will be applied sparingly under New York law and will not create coverage where none existed, especially where the carrier has denied from the offset of its knowledge of the case.

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