TRAUB LIEBERMAN

INSURANCE LAW BLOG

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Federal Court Upholds Uninsured Contractor Endorsement; Finds Duty to Defend Anyway

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In the recent case of *LM Ins. Corp. v. James River Ins. Co., 2025 U.S. Dist. LEXIS 189320 (S.D.N.Y. Sep. 25, 2025)*, the United States District Court for the Southern District of New York had occasion to interpret an Uninsured Contractor Endorsement in the context of an additional insured tender.

After a construction accident, the owner and general contractor tendered to a subcontractor, DATO, who had hired plaintiff's employer, Star. Investigations later revealed that DATO did not have a written contract with Star for the work at issue. DATO's insurer, Arch, denied any obligation to provide coverage to all parties seeking coverage, including additional insureds, based on DATO's failure to comply with the "New York Limitation Endorsement," which requires that "you," defined to be Arch's named insured, obtain certain pass through protections from subcontractors for New York projects, including a written contract.

The carriers for the owner and general contractor challenged Arch's denial, arguing that the separation of insureds provision mandates that the policy provisions apply separately to each insured seeking coverage. Because the owner and general contractor obtained pass through protections from their subcontractor, DATO, with whom there was a written contract, the owner and general contractor argued that the New York Limitation Endorsement was inapplicable to them. The court disagreed, holding that the use of the term "you," in the endorsement means that the endorsement's application to all insureds and additional insureds is premised upon the obligation of DATO with respect to its subcontractors. Because DATO did not obtain the requisite protections, there was no indemnity coverage available to any party seeking coverage.

However, because confirmation of the lack of the existence of a written contract required an investigation, and was not clear from the four corners of the underlying complaint, the court found that a duty to defend the owner and general contractor existed under the Arch policy.

This case illustrates the need for careful wording in an uninsured contractor endorsement. Use of alternative wording in such an endorsement, such as "the insured," could result in a different outcome given the separation of insureds wording. Further, the case illustrates the broad concept of the duty to defend.

