

R.I. Supreme Court Holds No Duty to Defend Additional Insured Outside Policy Coverage

The Rhode Island Supreme Court this summer ruled in *Bacon Construction Co., Inc. v. Arbella Protection Ins. Co.*, 2017-350 (R.I. June 4, 2019) that a trial court did not err in finding that a subcontractor's liability insurer was **not** obliged to provide coverage to the general contractor for personal injuries suffered by a worker at a construction project, when there was no claim that the subcontractor itself was negligent.

Appellant Bacon Construction, Inc. ("Bacon") had been hired as the general contractor for a construction project at the University of Rhode Island. Bacon, in turn, subcontracted certain work to U.S. Drywall. Pursuant to their contract, U.S. Drywall was required to obtain an insurance policy listing Bacon as an additional insured. U.S. Drywall did so, obtaining a policy from Arbella Protection Insurance Company ("Arbella"), and naming Bacon as an additional insured under that policy. During site work, a U.S. Drywall employee was severely injured. The employee brought suit against Bacon, alleging that Bacon's negligence was the proximate cause of his injuries. Bacon initially filed a third-party complaint against U.S. Drywall, claiming that their contract required U.S. Drywall to defend and indemnify them.

However, Bacon subsequently dismissed its suit with prejudice, and sought instead to recover indemnification through its "additional insured" status on the Arbella policy. It did so by filing a declaratory judgment action, seeking a Superior Court ruling that Arbella was contractually obligated to defend and indemnify Bacon, due to Bacon's additional insured status. Arbella argued, conversely, that it had no such duty, because the allegations in the underlying injury suit fell outside the scope of the policy's coverage – which was limited to negligence in *U.S. Drywall's* acts or omissions. There were no allegations in the underlying injury suit that U.S. Drywall had been negligent in any way. At the Superior Court, Arbella prevailed, prompting an appeal to the Rhode Island Supreme Court.

The Rhode Island Supreme Court held that the additional insured endorsement to the policy limited coverage to those situations where liability was attributable, at least in part, to the *negligence of the named insured*, whereas the allegations in the underlying complaint did not suggest that these injuries were due to any negligence on the part of U.S. Drywall. In so holding, the Court rejected Bacon's argument that the endorsement language that Bacon "*is an additional insured only with respect to liability for ... injury caused in whole or in part by (1) Your acts or omissions; or (2) the acts or omission of those acting on your behalf*" (emphasis in original) applies to claims arising from Bacon's own alleged negligence.

"You" and "Your" in the policy, the Court found, referred **to the named insured**, U.S. Drywall, only. The endorsement, then, is more accurately read as Bacon "*is an additional insured only with respect to liability for ... injury caused in whole or in part by (1) [U.S. Drywall's] acts or omissions; or (2) the acts or omission of those acting on [U.S. Drywall's] behalf*".

In the Court's view, the mere fact that the employee was injured while working for the named insured did not meet the causation requirement of the additional insured endorsement, and the plain language of the endorsement acted as a limitation on the policy's scope. The Court also found that Bacon's dismissal of the action against U.S. Drywall was "fatal because these actions extinguished any vicarious-liability claims that Bacon could have raised."

The lesson: pay close attention to the specific language regarding the scope of coverage before relying on the coverage. The courts certainly will.

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