Case Alert

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Second Circuit Holds That Employer's Liability Exclusion Does Not Bar Coverage Due to its Ambiguity

by Geoffrey Miller and Anastasiya Collins *

In *Hastings Development, LLC v. Evanston Insurance Company*,[1] the United States Court of Appeals for the Second Circuit held that an Employer's Liability Exclusion in a commercial general liability policy does not bar coverage of an underlying personal injury lawsuit because of the ambiguity within the language of the exclusion. This is significant because the court refused to broaden the scope of the exclusion beyond its original meaning, giving policyholders the upper hand in their potential coverage disputes with their insurers.

Hastings Development, LLC ("Hastings") requested coverage under its commercial general liability policy for a suit brought by an employee of its parent company, Universal Photonics, Inc. ("UPI"), who was injured while operating a mixing machine owned by Hastings in a building that Hastings also owned. The employee filed an action against UPI and Hastings seeking damages for the injury.

Hastings tendered the claim to Evanston Insurance Company ("Evanston") requesting defense and indemnification in the underlying lawsuit. Evanston denied coverage based on the Employer's Liability Exclusion in its commercial general liability policy which precludes coverage for any suit arising out of the bodily injury of "an employee of the Named Insured."[2] Evanston argued that the court should broadly interpret the policy language and extend the exclusion to both Hastings and UPI because it applies to *any* Named Insured covered under the policy. Hastings contended that the court should narrowly interpret the policy language and apply the exclusion only to UPI because it specifically refers to *the* Named Insured who employed the injured employee.

Hastings filed a declaratory judgement action in the United States District Court for the Eastern District of New York. The court granted Hastings partial summary judgment, holding that the exclusion only applies when the Named Insured is sued by its own employee, not when it is sued by an employee of another Named Insured covered by the same policy.

The Court of Appeals affirmed the district court's decision and found that there is an ambiguity in the policy language regarding whether the employer's liability exclusion precludes coverage for Hastings. As a result, the court settled the dispute in favor of the policyholder by applying the *contra proferentem* rule.[3] The court reasoned that, on the one hand, "the Employer's Liability Exclusion may . . . exclude coverage for injuries to 'an employee of *the* Named Insured.' On the other hand, . . . [it] may refer to employees of *any* of the Policy's list Named Insureds given the exclusion's broad definition of 'employee.'"[4]

The outcome of this case gives an advantage to policyholders in their potential disputes with insurance companies over the language ambiguity in the Employer's Liability Exclusion. Although this case provides more room to argue for coverage and ambiguity in similar disagreements, policyholders should be mindful of language within their policies that may broaden the scope of exclusion. As this case illustrates, policy language that refers to employees of any insured may be interpreted as rejecting coverage for liability claims by another insured's employee. A careful reading of insurance terms by policyholders will help them avoid insurance coverage litigation.

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[1] 701 F. App'x 40 (2d Cir. 2017)
[2] ID. at 43
[3] The contra proferentem rule provides that ambiguities in an insurance policy will be strictly interpreted against the insurer.
[4] ID. at 43 (emphasis added)