



Case Alert

Florida Court Holds that OCIP Exclusion Applies Equally to Named Insured and Additional Insured

The U.S. District Court for the Middle District of Florida, Orlando Division, recently held that an insurer had no duty to defend an additional insured due to an owner controlled insurance program (“OCIP”) policy exclusion, despite the fact that the additional insured was not enrolled in the wrap program and did not perform any operations at the project.

TNT Equip. Inc. v. Amerisure Mut. Ins. Co., 2016 U.S. Dist. Lexis 128734 (M.D. Fla., Sept. 21, 2016), concerned coverage for injuries to a worker at a construction project when the scaffolding to which he was harnessed collapsed. The equipment was leased from TNT Equipment, Inc. (“TNT”) to Stowell Company, Inc. (“Stowell”), and the lease required Stowell to name TNT as an additional insured on its CGL policy. The worker sued TNT, which tendered the suit to Stowell’s commercial general liability insurer, Amerisure Mutual Insurance Company (“Amerisure”). Amerisure denied the tender, and TNT filed a declaratory judgment action to determine that TNT was an additional insured under the Amerisure policy.

Amerisure argued that coverage was excluded pursuant to an exclusion, which provided:

This insurance does not apply to bodily injury or property damage arising out of either your ongoing operations or operations included within products completed operations hazard if such operations were at any time included within a controlled insurance program for a construction project in which you are or were involved.

Although TNT was a leasing company which performed no operations in the project, Amerisure claimed that the OCIP exclusion applied because the underlying claims were based on bodily injury arising

from Stowell’s operations and Stowell’s operations were covered by a controlled insurance program, specifically a general liability wrap-up policy controlled by the project owner.

TNT did not dispute that Stowell was covered under the OCIP nor that the OCIP exclusion applied to Stowell. Instead, TNT argued that the terms “you” and “your” in the OCIP exclusion referred only to Stowell as the named insured on the policy. TNT also argued that the exclusion should apply only to Stowell, since the policy had a Separation of Insureds provision and a Contractor’s General Liability Extension endorsement that distinguished TNT’s role as an additional insured from Stowell’s role as the named insured. TNT claimed that these provisions demonstrated the policy’s intent not to subject additional insureds to the OCIP exclusion.

The court first stated that the Separation of Insureds provision merely clarified that the policy applied separately to each insured. The provision did not identify TNT as an additional insured, did not distinguish the rights of any insureds, and did not limit the scope of any exclusion.

The court then stated that the Contractor’s General Liability Extension extended coverage to the equipment lessors, like TNT, but only for “liability arising out of the maintenance, operation or use by [Stowell] of the equipment.” The court reasoned that it was unreasonable for TNT to rely on the extension to obtain coverage for claims arising from Stowell’s operations and simultaneously attempt to escape the OCIP exclusion.

Finally, the court explained that even if it accepted TNT’s understanding of the policy, the claims would still fall within the scope of the OCIP exclusion be-

cause the exclusion expressly extended beyond the named insured. The exclusion pertained to Stowell’s “ongoing operations or operations included within the products-completed operations hazard” that were at any time included within a controlled insurance program. Thus, the court found that the exclusion would apply regardless of whether Stowell conducted the operations itself or whether another entity did so on its behalf. The court held that this demonstrated a clear intention that the OCIP exclusion applied to Stowell as both a named insured and additional insured.

Ambiguous language in insurance policies is generally interpreted in favor of the insured. However, this

case emphasizes the principle that policy exclusions deemed to be unambiguous will be applied as written. Despite the fact that TNT was an additional insured that performed no operations at the project, the court denied coverage because it found the OCIP exclusion unambiguous. This is a cautionary tale for additional insureds on projects that involve wrap-up policies.

For more information about the ramifications of this case, please contact Afua S. Akoto at asa@sdlaw.com or 203-287-2120 or Gregory D. Podolak at gdp@sdlaw.com or 239-315-4214.