NEW YORK COURT OF APPEALS

The Burlington Insurance Company v. NYC Transit Authority

The Burlington Ins. Co. v. NYC Transit Auth., 29 N.Y.3d 313, 79 N.E.3d 477 (2017) · No. No. 57 · Decided June 6, 2017

SUMMARY

The New York Court of Appeals held that an additional-insured endorsement covering bodily injury "caused, in whole or in part" by the named insured's acts or omissions requires proximate causation, rather than mere but-for causation. Because the named insured's conduct was not a proximate cause of the employee's injury, the additional insureds were not entitled to coverage where the injury resulted solely from their own negligence. The court reversed the Appellate Division and granted the insurer summary judgment on coverage.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Rivera, J.; DiFiore, C.J.; Fahey, J.; Garcia, J.; Stein, J.; Wilson, J.
JURISDICTION	New York
DECIDED	June 6, 2017
DOCKET	No. 57
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Insurance company brought a declaratory judgment action seeking a declaration that NYC Transit Authority and MTA New York City Transit were not additional insureds under a commercial general liability policy. Supreme Court granted the insurer summary judgment; the Appellate Division reversed and declared that defendants were entitled to coverage. The New York Court of Appeals granted leave to appeal.
STANDARD OF REVIEW	Interpretation of an unambiguous insurance policy is a question of law reviewed de novo; summary judgment is proper when the policy language and undisputed facts establish entitlement to judgment as a matter of law.
PRECEDENTIAL VALUE	Published, binding precedent of the New York Court of Appeals
PARTIES	The Burlington Insurance Company v. NYC Transit Authority, MTA New York City Transit

TOPICS

insurance coverage · declaratory relief insurance · contract interpretation · construction law

PRACTICE AREAS

insurance coverage · insurance litigation · construction law · contract interpretation

QUESTIONS PRESENTED

1. Whether an additional-insured endorsement providing coverage for bodily injury caused, in whole or in part, by the named insured's acts or omissions requires proximate causation by the named insured rather than mere but-for causation.
2. Whether the defendants were entitled to coverage when their own negligence was the sole proximate cause of the injury and the named insured's conduct was not negligent or otherwise actionable.
3. Whether Burlington was entitled to summary judgment on the coverage issue and related relief.

HOLDINGS

1. An endorsement limiting coverage to liability for bodily injury caused, in whole or in part, by the named insured's acts or omissions requires that the named insured be a proximate cause of the injury giving rise to liability; mere but-for causation is insufficient.
2. NYC Transit Authority and MTA New York City Transit were not additional insureds for the underlying injury because Breaking Solutions was not a proximate cause of the injury; NYC Transit Authority's sole negligence caused the accident.
3. Burlington was entitled to summary judgment on the coverage issue, while defendants' cross-motion for summary judgment declaring coverage was properly denied.

KEY QUOTATIONS

> *"We conclude that where an insurance policy is restricted to liability for any bodily injury "caused, in whole or in part," by the "acts or omissions" of the named insured, the coverage applies to injury proximately caused by the named insured."* (317)

> *"This is an incorrect interpretation of the policy language, which, by its terms, describes proximate causation and legal liability based on the insured's negligence or other actionable deed."* (321)

> *"These words require proximate causation since "but for" causation cannot be partial."* (322)

> *"Here, BSI was not at fault. The employee's injury was due to NYCTA's sole negligence in failing to identify, mark, or deenergize the cable."* (325)

FACTUAL BACKGROUND

NYC Transit Authority contracted with Breaking Solutions, Inc. to provide excavation equipment and personnel for a subway construction project. Breaking Solutions obtained a Burlington commercial general liability policy naming NYC Transit Authority, MTA New York City Transit, and New York City as additional insureds, but coverage was limited to liability for bodily injury caused in whole or in part by the named insured's acts or omissions. A Breaking Solutions machine contacted a buried energized cable, causing an explosion, but undisputed evidence showed that NYC Transit Authority had failed to identify, mark, or deenergize the cable and that the machine operator had no reason to know of its location or condition. The injured employee's claims against Breaking Solutions were dismissed, and Burlington settled the claims against the City before seeking a declaration that the transit entities were not covered.

PROCEDURAL HISTORY

Burlington issued a policy to Breaking Solutions, Inc. that named the defendants as additional insureds. After an employee was injured in a subway construction accident and discovery indicated that the defendants' negligence caused the accident, Burlington disclaimed coverage. Supreme Court granted Burlington summary judgment and later entered judgment on a contractual indemnification claim. The Appellate Division reversed, denied Burlington's motions, and declared that defendants were entitled to coverage. The Court of Appeals reversed and remitted for further proceedings.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Reverse the judgment appealed from and the Appellate Division order brought up for review; grant Burlington's motion for summary judgment on the first cause of action, deny defendants' cross-motion for summary judgment on that cause of action, and remit the case to the Appellate Division, First Department, for further proceedings consistent with the opinion.

CASES CITED

- Universal Am. Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., 25 N.Y.3d 675, 680 (2015)
- Vigilant Ins. Co. v. Bear Stearns Cos., Inc., 10 N.Y.3d 170, 177 (2008)
- White v. Continental Cas. Co., 9 N.Y.3d 264, 267 (2007)
- Cragg v. Allstate Indem. Corp., 17 N.Y.3d 118, 122 (2011)
- Derdiarian v. Felix Contracting Corp., 51 N.Y.2d 308, 314 (1980)
- Hain v. Jamison, 28 N.Y.3d 524, 528-529 (2016)
- Koehler v. Schwartz, 48 N.Y.2d 807, 808-809 (1979)
- Ventricelli v. Kinney Sys. Rent A Car, 45 N.Y.2d 950, 952 (1978), amended, 46 N.Y.2d 770 (1978)
- Palsgraf v. Long Island R.R. Co., 248 N.Y. 339, 352 (1928)
- Argentina v. Emery World Wide Delivery Corp., 93 N.Y.2d 554, 560 n.2 (1999)
- Maroney v. New York Cent. Mut. Fire Ins. Co., 5 N.Y.3d 467, 472 (2005)
- Worth Constr. Co. v. Admiral Ins. Co., 10 N.Y.3d 411, 415 (2008)
- Regal Constr. Corp. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA, 15 N.Y.3d 34, 38-39 (2010)
- Burlington Ins. Co. v. NYC Transit Auth., 132 A.D.3d 127, 134-138 (1st Dep't 2015)

- W & W Glass Sys., Inc. v. Admiral Ins. Co., 91 A.D.3d 530 (1st Dep't 2012)
- Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Greenwich Ins. Co., 103 A.D.3d 473 (1st Dep't 2013)
- Chimart Assocs. v. Paul, 66 N.Y.2d 570, 574 (1986)

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