

Managers, landlords and lessors, oh my! What does it mean to be an additional insured?

By Stephen Soule

Great American Dining vs. Philadelphia Indemnity Insurance Company, ___ A.3d ___,

2013 WL 656908 (NH 2013) is an interesting case from the New Hampshire Supreme Court, released on February 25, 2013. Many of us can appreciate the facts. DW Ray owned a commercial building and leased it to Webster Place. DW Ray required Webster Place to get insurance that listed DW Ray as an additional insured. A business invitee, Dr. Wyly, fell through a porch railing at Webster Place while Great American Dining was doing some renovations and suffered serious injuries.

In the first round of litigation, the court declared that DW Ray was an additional insured under the Webster Place insurance policy with Philadelphia Indemnity. Once that was ironed out, DW Ray and Webster Place settled with Dr. Wyly and both of them, together with Philadelphia Indemnity, sued Great American Dining on the theory that Great American Dining was responsible for constructing, inspecting and maintaining the porch rail.

What would you do at that point if you were Great American Dining? You would notify your own insurance company of the lawsuit, of course. That is just what they did. The case went to trial and the jury found Great American Dining was 45% at fault for Dr. Wyly's injuries.

What would you do if you were Great American Dining's insurance company? You would sue Philadelphia Indemnity for a declaration that you are also an additional insured under Webster Place's policy. You would argue that Philadelphia Indemnity (who sued you to begin with) must reimburse you for your defense costs, attorney's fees and the judgment for 45% of the settlement with Dr. Wyly. That's just what the Great American Dining's insurance company did, and they won.

This opinion demonstrates that it is important to read the insurance policy closely in order to determine who is covered when you are facing an "additional insured" situation. DW Ray was listed as an additional insured in an endorsement to the Philadelphia Indemnity insurance policy. The policy had eight separate paragraphs describing the type of entities and individuals that were included as additional insureds. One of those paragraphs extended "additional insured" status to "any person or organization" with respect to their liability arising out of the ownership, maintenance or use of rented premises. That paragraph was entitled "Managers, Landlords, or Lessors of Premises."



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The New Hampshire Supreme Court did two interesting things with that paragraph. First of all, the Court read it as would an “ordinary person,” not from the point of view of an insurance expert. Second, the Court disregarded the title of the paragraph, which seemed to limit “additional insureds” only to managers, landlords or lessors. The paragraph itself was much broader in its description of who was going to be covered. “Any person or organization” that might be liable because of the ownership, maintenance or use of the premises was covered. For that reason, the Court found that Great American Dining was insured under the Philadelphia Indemnity policy.

Great American Dining was apparently doing some renovation work at the time that Dr. Wyly was injured, so the Court also needed to determine whether renovation was “maintenance,” which would be covered in that paragraph. Because the insurance policy did not define “maintenance,” the Court could use an ordinary person’s understanding of the term and found that “maintenance” could include activities as varied as “repair” and “renovation.”

The lesson for us in this case is that a business might have insurance coverage from sources other than its own insurance policy. In premises liability situations, it is always a good idea to check the landlord’s policy and the building owner’s policy for “additional insured” provisions, especially if a premises liability claim arises from a defect in the building itself.

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