

Blaneys Partner Successful in Appeal before Divisional Court

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Blaney McMurtry insurance partner Colin Empke was successful in a recent application before the Ontario Divisional Court, granting his client's appeal in the matter of Dominion of Canada General Insurance Company v. ING Insurance Company of Canada, 2011 ONSC 3841. At issue in the appeal was the interpretation of the "additional insured" endorsement of the Appellant ING's insurance contract.

The following is a summary of the decision:

The Facts

Blaney McMurtry client, Intact Insurance (ING), insured the operators of a banquet hall pursuant to a general liability policy. Dominion of Canada insured the owner of the building. In 2005 the plaintiff slipped and fell on ice in the parking lot as he was going to his car after a wedding reception. Pursuant to the lease the owner had full responsibility for maintaining the parking lot. The plaintiff sued the banquet hall, the building owner and the snow removal contractor. At mediation the three defendants agree to settle the matter and paid the damages in equal shares. All crossclaims were also dismissed, without costs.

The owner was an additional insured under the ING policy, pursuant to an endorsement which stated the owner was insured "but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises....leased to" the banquet hall.

At issue was whether this endorsement was broad enough to include the owner's liability for the slip and fall, such that ING should share in the defence costs paid by Dominion on behalf of the owner as well as pay part of the damages Dominion paid on behalf of the owner.

The Application

Dominion brought an application, asking the court to order ING to pay 50% of the owner's

defence costs and 50% of the sums it paid to settle the case. The application judge ordered ING to make these payments. The judge reasoned that the word "premises" used in the additional insured endorsement encompassed all of the building and the parking lot. In so doing the judge did not consider the terms of the lease itself as assisting her in making a determination of what the "premises" were and, therefore, what activities would fall within the scope of ING's coverage for the owner.

The judge also ruled that because the plaintiff was going to and from the banquet hall, his accident in the parking lot "arose from" the use of the premises. As such, the judge held that the slip and fall accident was the very thing the additional insured endorsement was intended to cover.

Blaney McMurtry were not counsel at the original application. Colin was retained to appeal the decision to the Divisional Court.

The Appeal

Before the Divisional Court Colin argued that the lease contained a definition of "premises" that did not include the parking lot, which was treated in the lease as a common area rather than part of the "demised premises". Colin also argued that the accident was not causally connected to the banquet hall, but arose out of the negligent conditions in the parking lot.

The Divisional Court agreed on both points and granted the appeal, with costs. In the result the Divisional Court noted that "the parties cannot have intended that insurance coverage for the landlord would be extended to cover injuries caused by the use of other areas of the property that the landlord was required to maintain."

Although the decision hinges on the particular wording of the ING policy, other companies use similar language in their additional insured endorsements. By requiring a court to examine the lease between the parties in order to inform its decision, the case may assist our clients in clarifying what coverage is actually provided by additional insured endorsements. By imposing a requirement for causal connection between the use by the tenant and the landlord's obligations, this case may assist in resolving claims for indemnification under such endorsements.

For a full copy of the Court's decision, please contact Colin Empke at cempke@blaney.com

PEOPLE

- W. Colin Empke

PRACTICES

- Insurance Coverage Counsel