March 27, 2015

Day Pitney Secures Summary Judgment for Northfield Insurance Company

(Hartford, CT, March 27, 2015) -- Day Pitney secured a significant summary judgment in favor of Northfield Insurance Company, a subsidiary of Travelers Group. The decision of Judge Laurie J. Michelson of the U.S. District Court for the Eastern District of Michigan is significant in protecting insurers on an issue that arises in many claims where policyholders argue that commercial general liability policies should cover injuries to persons who assist the policyholder in performing a business-related task but who are not on the policyholder's payroll.

The case, *Cone v. Northfield Insurance Co.,* was an insurance coverage action brought by an underlying tort victim. The plaintiff sought to enforce a $1.5 million consent judgment obtained against Northfield's policyholder, an individual who operated a landscaping company. The plaintiff suffered traumatic injuries when his hand became stuck in the mechanisms of a forklift operated by Northfield's policyholder. The plaintiff sued the policyholder, but Northfield declined to provide a defense, citing the policy's exclusion for injuries suffered while working for the policyholder -- no matter what the injured person's employment status was at the time of injury. The plaintiff and the policyholder settled the underlying case, agreeing to the $1.5 million consent judgment and the policyholder's assignment of his rights against Northfield.

The plaintiff subsequently sued Northfield to recover the full amount of the consent judgment. In response to Northfield's motion for summary judgment, the plaintiff argued that he was not an employee or "volunteer worker" of the policyholder, but rather he said he was "just a friend," who briefly helped the policyholder paint a warehouse on the day of the accident and, therefore, was not performing any "duties" as required by the exclusion. He also contended that the policy's exclusion did not apply because it only applied to persons who assist in the performance of the insured's "business," but the policy's declaration page identified the insured's business as "lawn care and snow removal," not "painting." The plaintiff submitted an affidavit of an insurance expert who opined that, under these circumstances, Northfield was obligated to provide a defense to the policyholder given the limited nature of the plaintiff's involvement in the painting project and the fact that the policyholder did not routinely engage in the painting business.

Judge Michelson, however, determined that the policy's exclusion unambiguously applied to the plaintiff's claims because the plaintiff had been assisting the policyholder in performing a painting project that the policyholder had agreed to undertake for a third-party.

This decision represents an important precedent for Northfield, and builds off of a prior victory that Day Pitney obtained for Northfield in a Connecticut action, *Frederick v. Northfield Ins. Co.,* in which Northfield faced a similar attempt by a policyholder to circumvent the policy's laborer exclusion by arguing that the claimant was not working for the policyholder at the time he suffered his injuries.

Hartford partner Joe Scully argued the matter before Judge Michelson, and led the Day Pitney team, which included counsel Dean Cordiano and associates Dan Raccuia and Kristin Sullivan.