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And The Defense Wins

In a recent landmark ruling from the Supreme Court of New York, New York County, DRI member [Edward Ruberry](#) of the Chicago law firm **Bollinger, Ruberry & Garvey** obtained a finding from the court that a policy limits settlement by his client, Lincoln General Insurance Company, extinguished the client's duty to defend its named insured and additional insureds. The court's decision was the result of Lincoln General's efforts to intervene and settle one of the numerous claims that sprang from a 2008 crane collapse in New York City.

The collapse occurred on March 15, 2008, at the construction site of a residential skyscraper at 303 East 51st Street in midtown Manhattan, resulting in the deaths of seven people, as well as numerous bodily injury and property damage claims. These claims led to multiple lawsuits filed in New York state court and consolidated before Justice Karen S. Smith. At the time of the collapse, Joy Construction (the construction manager) was the named insured on a commercial general liability policy issued by Lincoln General. East 51st Street Development Company, LLC (the owner and developer of the property) and Reliance Construction Group (the general contractor) were additional insureds. Mr. Ruberry argued on behalf of Lincoln General that the relevant New York decisions, as well as the language in the CGL policy that Lincoln General issued to Joy Construction, set the groundwork for the termination of an insurer's defense duties once it settled a claim (or several claims) for its policy limits.

Justice Smith affirmed that Lincoln General's motion to intervene was the proper procedural vehicle to resolve this issue. She further held that the CGL policy language authorized Lincoln General to settle a claim for its policy limit and thereby extinguish its duty to defend the insureds against the remaining claims.

This landmark opinion will assist insurers that are defending insureds embroiled in large lawsuits by providing them guidance on this issue in New York. Given the proper circumstances, insurers doing business in New York now have a viable alternative to funding "runaway" defense costs in large cases.



Edward Ruberry