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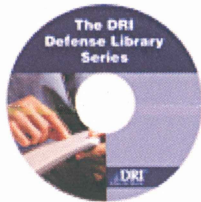
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And The Defense Wins

Edward F. Ruberry



In a recent unanimous opinion from the New York Appellate Division, First Department, DRI member **Edward F. Ruberry** of the Chicago law firm **Bollinger, Ruberry & Garvey** obtained a decision from the Appellate Division affirming a landmark ruling that held that the policy limits settlement between his client, Lincoln General Insurance Company, and third-party plaintiffs extinguished his client's duty to defend its named insured and additional insureds. The Appellate Division's decision followed Lincoln General's successful efforts to intervene in a number of lawsuits pending in the New York County Supreme Court that stem from crane collapse in New York City in March 2008.

The collapse occurred on March 15, 2008, at a construction site in mid-town 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 and consolidated before Justice Karen Smith in New York County. At the time of the collapse, Joy Contractors (a subcontractor on the project) was the named insured on a commercial general liability policy issued by Lincoln General. East 51st Street Development Company, LLC (the owner/developer) and Reliance Construction Group (the general contractor) were additional insureds under the Lincoln General policy. On February 18, 2010, Justice Smith entered an order in which she found that Lincoln General extinguished its duty to defend Joy Contractors, East 51st Street and Reliance Construction when it paid its liability limits in settlement of two of the crane collapse claims.

In March 2010, Reliance Construction appealed Justice Smith's ruling. In that appeal, Mr. Ruberry argued that the clear and unambiguous language of the insuring agreement, which stated Lincoln General's right and duty to defend ends when it used up the applicable limit of insurance in the payment of judgments or settlements, set forth the full extent of Lincoln General's defense obligations. Mr. Ruberry also asserted that Reliance Construction improperly relied upon New York law that required automobile insurers to continue to defend their insured until the claims against the insured are resolved, even if the insured's policy limit is exhausted. Mr. Ruberry specifically argued that there was no statutory or regulatory authority to support the proposition that a similar duty applied to an insurer that provided commercial general liability insurance.

In its Order on May 10, 2011, the Appellate Division ruled that a plain reading of the Lincoln General policy makes clear that Lincoln General has no obligation to defend after the liability limit of the policy was exhausted. The Appellate Division also rejected Reliance Construction's reference to automobile insurance law, finding New York law concerning auto insurance does not have any application in the context of commercial general liability insurance.

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In addition to the New York Appellate Division's decision affirming Justice Smith's February 2010 ruling, Mr. Ruberry also recently prevailed on Lincoln General's behalf in a separate insurance coverage action initiated by East 51st Street. Specifically, on December 16, 2010, Justice Carol Robinson Edmead ruled that Lincoln General was excess to two other insurers of a common additional insured with respect to nearly \$5 million in defense costs incurred by that additional insured. (discussed in the March 2, 2011, edition of *The Voice*).

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