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Alerts

# Additional Insured Coverage Cannot Be Divorced From the Concept of Fault

**March 14, 2013**
*Insurance Coverage Alert*

*Engineering & Construction Innovations, Inc. v. L.H. Bolduc Co., Inc.*, ___ N.W.2d___, 2013 WL 238199 (Minn. 2013).

On January 23, 2013, the Minnesota Supreme Court issued an opinion holding that a commercial general liability (CGL) policy issued to a subcontractor provided additional insured coverage to a contractor only for vicarious liability arising from the subcontractor's negligent acts or omissions.

The lawsuit arose out of the construction of a sewer pipeline system in Hugo, Minnesota. Plaintiff engineering firm was hired to install lift stations and other structures along the pipeline. It subcontracted with a pile-driving company to drive metal cofferdam sheeting into the ground to act as walls during excavation. Under the subcontract, the engineering firm was responsible for directing the pile-driving company where to place the cofferdam sheets. After the subcontractor had performed its work, the engineering firm discovered that the pipeline had been damaged by one of the metal cofferdam sheets.

The engineering firm repaired the damage and sued the subcontractor and the subcontractor's general liability insurer to recover its repair costs. The engineering firm claimed that the subcontractor was negligent, that the subcontractor's CGL policy covered the engineering firm as an additional insured, and that the engineering firm was entitled to indemnification under the subcontract. A jury found that the subcontractor was not negligent because it had placed the sheets where the engineering firm had directed. The parties then brought cross-motions for summary judgment on the insurance coverage and indemnity issues.

The additional insured endorsement at issue provided that the engineering firm qualified as an additional insured "[i]f, and only to the extent that, the injury or damage is caused by acts or omissions of [the subcontractor] in the performance of '[its] work' . . . ." The engineering firm argued that the plain meaning of "acts or omissions" did not require negligence as a precursor to coverage. The Court rejected this limited reading, finding that the engineering firm's coverage under the endorsement could not be divorced from the concept of fault. The Court held that the unambiguous phrase "caused by acts or omissions of [the subcontractor]" provided additional insured coverage to the engineering firm only for its vicarious liability arising from the subcontractor's negligence. Because a jury found that the subcontractor was not negligent, the engineering firm could have no vicarious liability and was not entitled to additional insured coverage.

The Court further held that the engineering firm was not entitled to indemnification from the pile-driving company under the subcontract. Minn. Stat. § 337.02 prohibits a subcontractor from indemnifying a contractor for the contractor's own negligence. The Court observed that although the statute includes a narrow exception for contracts where the subcontractor agrees to obtain insurance coverage for the contractor's negligence, the exception did not apply. Because the insurance policy only provided additional insured coverage to the engineering firm for the subcontractor's negligence, not for the engineering firm's own negligence, the indemnification agreement was necessarily limited to the same scope by Section 337.02.

**Practice Note**

The holding in *Bolduc* will have little effect at the duty-to-defend stage of a typical case. Because a subcontractor's liability usually has not been established at that point, an insurer may be compelled to defend the general contractor under an additional insured endorsement. However, an insurer should advise the general contractor of the strict limitations of its indemnity obligations — the insurer is obligated to indemnify a general contractor for its vicarious liability for the insured subcontractor's negligence.

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