

Construction Newsflash



January 2007

New Supreme Court Case Requires That You Verify Coverage For Worksite Accident Claims With Your Employers/Workman's Compensation Insurance Carrier

On January 19, 2007 the Illinois Supreme Court released its decision in *Virginia Surety Company, Inc. v. Northern Insurance Company of New York* (No. 102036. Jan. 19, 2007). The Court held that agreements whereby Subcontractors who agree to indemnify others, i.e. the General Contractors, Owners, etc. for liability arising out of Subcontractors negligence (suits brought by injured employees of Subcontractors) are not "insured contracts" as defined by CGL policy. As a result, the court held that the contribution actions filed by General Contractors, Owners and others against the Subcontractors fall within the employee exclusion of the standard CGL policy and are therefore not covered by the Subcontractor's CGL policy.

The court also overruled the case of *Christy-Foltz v. Safety Mutual Insurance Company Corp.*, 309 Ill.App.3d 686 (4th Dist. 2000) which previously held that an employer's agreement to waive the *Kotecki* limitation on liability fell within the standard exclusion in an employers liability policy for the voluntary assumption of liability. Although the court did not expressly state the employers liability policy would cover such contribution claims brought by General Contractors, Owners and others against Subcontractors, nevertheless, the underlying rationale for why those claims were traditionally denied has now been overruled. Thus, in all likelihood the employer's liability policy will now cover those contribution claims.

As a business practice, we recommend that you make a formal request through your insurance broker to your insurance carrier to make sure that contribution actions brought against you for claims asserted by your injured employee are in fact now covered by your employer's liability policy.

At present, we believe that this case will not affect the practice of target tenders for work site accident claims. If you have any questions, please feel free to contact us.

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