

# Cray • Huber

Hastings Mut. Ins. Co. v. Blidnerman Constr. Co., Inc. et al., 2017 IL App (1st) 162234. This additional insured coverage dispute addresses whether a subcontractor's insurer has a duty to defend the general contractor-additional insured where the underlying complaint contains no allegations of negligence against the subcontractor. Blidnerman Construction Company, Inc. was the general contractor for a construction of an elementary school in Chicago. Blidnerman hired JM Polcurr, Inc. as the electrical subcontractor. Robert Woods, an employee of Polcurr, was severely injured when he fell from a ladder while working on the project. His complaint alleged Blidnerman failed to supervise the work, failed to provide a safe workplace, and failed to warn of the danger. The plaintiff made no allegations against Polcurr. Blidnerman filed a third-party complaint against Polcurr, alleging Polcurr shared responsibility for the accident because it failed to inspect and improperly maintained the area and because it failed to warn Woods of the danger.

Hastings Mutual Insurance Company, which issued a general liability policy to Polcurr, rejected Blidnerman's tender of defense and indemnification. Hastings cited the additional insured language in its policy issued to Polcurr, which stated in relevant part:

With respect to the insurance afforded to these additional insureds, the following exclusions apply:

\* \* \*

liability arising out of the sole negligence of the additional insured or by those acting on behalf of the additional insured.

The parties filed cross-motions for summary judgment in the coverage case. Blidnerman supported its motion with its third-party complaint and the depositions of two Polcurr employees who confirmed all Polcurr employees used their own equipment and were responsible for keeping their work area safe, thereby suggesting Polcurr rather than Blidnerman was the truly culpable party. The circuit court held Hastings had no duty to defend.

The appellate court reversed. The court held Blidnerman did not have to prove it was entitled to a defense, but rather that Hastings, because it relied on an exclusion, had the burden to prove the claim fell within its exclusion. Hastings relied on the fact that the plaintiff had not alleged Polcurr was negligent; the court held this was insufficient to carry its burden. This case appears to indicate that an insurer relying on an AI exclusion in its policy should consider defending its alleged additional insured until such time as it can prove there is no genuine issue of material fact that its AI exclusion applies. The case also underscores the fact that allegations of direct negligence by a tort plaintiff against a subcontractor are no longer necessary for a general contractor to qualify as an additional insured under a subcontractor's CGL policy in Illinois.

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