

***Zurich American Ins. Co. v. Ace American Ins. Co.*: The New York Appellate Court Interprets the “Any Auto” Endorsement in the Context of Joint Venture**

BY ROCKY ROGERS

The New York Appellate Court recently issued an opinion addressing the oft-used “any auto” endorsement for commercial auto liability policies in the context of a complex joint venture. The court found the endorsement extended primary insurance obligations to an accident involving a vehicle owned by a joint venturer of the named insured.

The dispute arises from personal injuries sustained by two construction workers while unloading rebar at a construction site. The construction project was a joint venture between multiple companies. The joint venture entity (“TP”), agreed to have the project insured by an “owner-controlled insurance program” (“OCIP”) administered by a third-party administrator for CGL, excess liability, employers’ liability, and workers compensation insurance. Members of the joint venture would enroll in the OCIP, which required each to maintain certain primary levels of liability insurance plus excess insurance. Consistent with the OCIP requirements, Zurich Insurance issued a commercial auto liability policy to TP. One or both employees were employed by another joint venturer in the construction project (“BRJV”), who was to be insured through the OCIP. Drive New Jersey Insurance Company issued a commercial auto liability policy to BRJV, which appears to have been issued outside of the OCIP. The Drive NJ commercial policy contained an “Any Auto Legal Liability Endorsement,” which extended the definition of “insured auto” to include “any auto” if the named insured is a partnership, corporation, or any other entity.

It was undisputed the workers’ injuries occurred as they were unloading rebar from a flatbed trailer that was owned by TP and which was connected to a tractor leased by TP. The court evidently decided the accident occurred in connection with the use of the trailer. The two workers filed suit against TP and other entities alleging negligence and violation of state labor laws. The various insurers exchanged opposing tenders of the defense of the underlying tort suits before Zurich initiated a declaratory judgment action seeking a declaration of the insurers’ respective rights and obligations.

The New York Appellate Court held that the Drive NJ commercial auto policy extended primary insurance coverage to the tractor-trailer involved in the accident because TP and BRJV were joint venturers in the project. Stated differently, TP was an additional insured under the Drive NJ policy. Thus, even though the tractor-trailer was also insured under the Zurich commercial auto policy issued to TP via the OCIP, the Drive NJ policy was held to provide primary coverage to TP as a joint venture of BRJV. The court therefore held Drive NJ must provide a defense to TP in the underlying actions on a primary, non-contributory basis, subject to applicable employee exclusions, and ordered Drive NJ to reimburse Zurich for any costs incurred in defending those actions.

While not overly common in the trucking context, joint venture arrangements cause insurers to carefully ascertain the various obligations of multiple insurers. This decision highlights the necessity of insurers to properly analyze their insurance obligations in the context of a larger insurance program. It is unclear from the decision if the CGL would have been drawn into this as well under a theory relating to loading or unloading responsibility.