Lowenstein Sandler

Client Alert

Insurance Recovery

April 17, 2024

Do the Sublimits in Your Insurance Policies Expand or Reduce Coverage?

By Lynda A. Bennett and Alexander B. Corson

Earlier this month, the New Jersey Appellate Division issued an unpublished opinion reminding policyholders of the first rule of insurance: Words matter. In *Rivera v. Starstone Specialty Ins. Co.*,[1] the court was asked to address a common fact pattern, in which a follow-form excess insurer sought to avoid coverage for a claim that was subject to a $50,000 sublimit in the primary policy. When asked to pay above that sublimit, the excess insurer took the position that its policy only applied if the full $1 million primary policy limit had been paid.

The Appellate Division sided with the insurer, grounding its decision in the fact that the words "applicable underlying limit" – as used in the excess policy – were specifically defined as the limits in the *Declarations* of the primary policy. Since the $50,000 sublimit was located in an endorsement to the primary policy – and not on the "Declarations" page – the court held that the applicable underlying limit had not been exhausted and, as a result, excess coverage had not been triggered.

As we have discussed before, policyholders purchase "follow form" excess policies expecting uniformity of coverage in the same tower of insurance. However, excess forms have become increasingly varied in recent years and sometimes yield surprising results. In *Rivera*, the interplay between the excess policy's definition of "applicable underlying limit" and the manner in which the primary insurer chose to write its coverage forms led to a gap in coverage that might not have otherwise existed had the sublimit been listed on the declarations page.
Peculiar interactions with excess policies is not the only way that a sublimit endorsement may surprise policyholders. As important – if not more so – is the interplay between a sublimit endorsement and the *rest of the policy*. While these forms often *expand* coverage that would not otherwise exist, i.e., by providing limited coverage for otherwise *excluded* conduct, sublimit endorsements may also *reduce* coverage, i.e., by placing a cap on conduct or conditions that are otherwise *covered* by the policy.

Policyholders should carefully review sublimit endorsements, especially those added on renewal, to understand whether the language reflects a narrowing or broadening of coverage. When in doubt, businesses should be guided by the knowledge of experienced insurance brokers and/or coverage counsel to avoid unwelcome surprises.

---

[1] No. A-2345-21 (App. Div. Apr. 1, 2024).

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

LYNDA A. BENNETT
Partner
Chair, Insurance Recovery Group
T: 973.597.6338
lbennett@lowenstein.com

ALEXANDER B. CORSON
Associate
T: 973.597.6248
acorson@lowenstein.com