28 N.Y.3d 675, 71 N.E.3d 556, 49 N.Y.S.3d 65, 2017 N.Y. Slip Op. 01141

****1** Lend Lease (US) Construction LMB Inc. et al., Appellants,
v
Zurich American Insurance Company et al., Respondents.

Court of Appeals of New York
11
Argued January 11, 2017
Decided February 14, 2017

CITE TITLE AS: Lend Lease (US) Constr. LMB Inc. v Zurich Am. Ins. Co.

SUMMARY

Appeal from an order of the Appellate Division of the Supreme Court in the First Judicial Department, entered December 22, 2015. The Appellate Division, with two Justices dissenting, modified, on the law, an order of the Supreme Court, New York County (Eileen A. Rakower, J.; op 2015 NY Slip Op 30039[U] [2015]), which had denied plaintiffs' respective motions and defendants' cross motions for summary judgment. The modification consisted of granting defendants' cross motions for summary judgment and declaring that defendants have no obligation to provide coverage under the builder's risk policy. The Appellate Division affirmed the judgment as modified.

Lend Lease (US) Constr. LMB Inc. v Zurich Am. Ins. Co., 136 AD3d 52, affirmed.

HEADNOTES

Insurance
Disclaimer of Coverage

Coverage Requirements—Disclosure of Tower Crane in Total Project Value

([1]) In plaintiffs' action seeking a declaration of coverage under the builder's risk policy furnished by defendants for storm damage to a tower crane affixed to a building for use in plaintiffs' construction of a skyscraper, a triable issue of fact existed as to whether the crane was covered under the insurance provided for temporary works. The crane was a "structure" within the meaning of the policy, and was "temporary" in that it was anchored and tied to the building only "during construction" and was to be "removed when . . . no longer needed." However, whether the value of the crane was disclosed as part of the "total project value," another requirement for coverage, could not be determined on the record as a matter of law. The evidence submitted with respect to the "total project value" question included an affidavit averring that the actual market value of the crane was impliedly, but not expressly, disclosed to defendants as required for the crane to constitute a "temporary work"—and, therefore, "covered property"—within the meaning of the policy.

Insurance
Exclusions

Contractor's Tools, Machinery, Plant and Equipment

([2]) Defendant insurers were not obligated to provide coverage under the builder's risk policy issued to plaintiffs for storm damage to a tower crane affixed to a building for use in plaintiffs' construction of a skyscraper, as the crane fell within the policy's exclusion for "[c]ontractor's tools, machinery, plant and equipment . . . not destined to become a permanent part of the [building]." The crane fell squarely within the definition of "machinery," and ***676** although components of the crane were to permanently remain part of the building following completion of construction, the record conclusively reflected that the principal parts of the crane were "not destined to become a permanent part of the [building]" upon the completion of construction. Moreover, the exclusion was not so broad as to render coverage afforded under the temporary works provision of the policy illusory. The contractor's tools exclusion did not defeat all of the coverage afforded under the policy's temporary works provision, and thus enforcement of the exclusion would not create a result that would have the exclusion swallow the policy.

RESEARCH REFERENCES

Am Jur 2d Building and Construction Contracts § 148; Am Jur 2d Insurance §§ 4, 192, 403, 508, 648, 940–941, 1546, 1709, 1785.

Carmody-Wait 2d Complaints in Particular Actions § 29:103; Carmody-Wait 2d Judgments § 63:596.

Couch on Insurance (3d ed) §§ 102:31, 126:20, 129:18, 132:20–132:22, 155:43–155:44, 220:32.

New York Construction Law Manual (2013 ed) §§ 2:42–2:43, 10:3, 10:6, 10:8, 10:11, 10:14, 10:34.

NY Jur 2d Insurance §§ 583, 1642, 1645, 2052, 2056–2058, 2061, 2142, 2201, 1474.

ANNOTATION REFERENCE

Coverage under builder's risk insurance policy. 97 ALR3d 1270.

FIND SIMILAR CASES ON THOMSON REUTERS WESTLAW

Path: Home > Cases > New York State & Federal Cases > New York Official Reports

Query: build! /3 risk! & crane!

POINTS OF COUNSEL

Carroll McNulty & Kull LLC, New York City (*Matthew J. Lodge* of counsel), for Lend Lease (US) Construction LMB Inc., appellant.

I. The tower crane constitutes "temporary works," as defined by the policy. (*Cornacchione v Clark Concrete Co.*, 278 AD2d 800; *Cun-En Lin v Holy Family Monuments*, 18 AD3d 800; *McCoy v Kirsch*, 99 AD3d 13; *York v Sterling Ins. Co.*, 114 AD2d 665; *Cocchi v National Union Fire Ins. Co. of Pittsburgh, Pa.*, 156 AD2d 535; *Boh v Pan Am. Petroleum Corp.*, 128 F2d 864; *242-44 E. 77th St., LLC v Greater N.Y. Mut. Ins. Co.*, 31 AD3d 100; *Matter of Riefberg*, 58 NY2d 134.) II. The insurers cannot satisfy their burden of showing that the contractor's ***677** tools exclusion applies. (*Dean v Tower Ins. Co. of N.Y.*, 19 NY3d 704; *Sea Ins. Co., Ltd. v Westchester Fire Ins. Co.*, 51 F3d 22; *American Home Assur. Co. v Port Auth. of N.Y. & N.J.*, 66 AD2d 269; *Continental Cas. Co. v Rapid-American Corp.*, 80 NY2d 640; *Village of Sylvan Beach, N.Y. v Travelers Indem. Co.*, 55 F3d 114; *Show Car Speed Shop v United States Fid. & Guar. Co.*, 192 AD2d 1063; *De Forte v Allstate Ins. Co.*, 81 AD2d 465; *Belt Painting Corp. v TIG Ins. Co.*, 100 NY2d 377; *United States Fire Ins. Co. v General Reins. Corp.*, 949 F2d 569; *Garza v Marine Transp. Lines, Inc.*, 861 F2d 23.) III. Lend Lease (US) Construction LMB Inc. has met its burden to merit judgment as a matter of law on the issue of liability. (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851; *Zuckerman v City of New York*, 49 NY2d 557; *Alvarez v Prospect Hosp.*, 68 NY2d 320; *Donadio v Crouse-Irving Mem. Hosp.*, 75 AD2d 715; *S.J. Capelin Assoc. v Globe Mfg. Corp.*, 34 NY2d 338; *Pizzi v Bradlee's Div. of Stop & Shop*, 172 AD2d 504; *Hewett v Marine Midland Bank of Southeastern N.Y.*, 86 AD2d 263; *B&W Heat Treating Co., Inc. v Hartford Fire Ins. Co.*, 23 AD3d 1102; *Town of Harrison v National Union Fire Ins. Co. of Pittsburgh, Pa.*, 89 NY2d 308; *Senate Ins. Co. v Tamarack Am.*, 14 AD3d 922.)

Greenberg, Trager & Herbst, LLP, New York City (*Richard J. Lambert* of counsel), for Extell West 57th Street LLC, appellant.

I. The order below should be reversed and summary judgment granted to Extell West 57th Street LLC on the issue of coverage. (*Executive Risk Indem., Inc. v Starwood Hotels & Resorts Worldwide, Inc.*, 98 AD3d 878; *Ace Wire & Cable Co. v Aetna Cas. & Sur. Co.*, 60 NY2d 390; *Belt Painting Corp. v TIG Ins. Co.*, 100 NY2d 377; *Dean v Tower Ins. Co. of N.Y.*, 19 NY3d 704; *Ragins v Hospitals Ins. Co., Inc.*, 22 NY3d 1019; *Westview Assoc. v Guaranty Natl. Ins. Co.*, 95 NY2d 334; *United States Fid. & Guar. Co. v Annunziata*, 67 NY2d 229; *City of New York v Evanston Ins. Co.*, 39 AD3d 153; *Primavera v Rose & Kiernan*, 248 AD2d 842; *Raner v Security Mut. Ins. Co.*, 102 AD3d 485.) II. The tower crane is a "temporary structure" within the meaning of the temporary works coverage provision. (*Cornacchione v Clark Concrete Co.*, 278 AD2d 800; *Cun-En Lin v Holy Family Monuments*, 18 AD3d 800; *McCoy v Kirsch*, 99 AD3d 13; *Caddy v Interborough R.T. Co.*, 195 NY 415; *Matter of Riefberg*, 58 NY2d 134; *Consolidated Edison Co. of N.Y. v Allstate Ins. Co.*, 98 NY2d 208.) III. The tower crane is "incidental to the project." (*Harris v Allstate Ins. Co.*, 309 NY 72; *Connors v Hartford Fire Ins. Co.*, 138 AD2d 877; *Miller v Continental Ins. Co.*, 40 NY2d 675; ***678** *Wade v Atlantic Cooling Tower Servs., Inc.*, 56 AD3d 547; *Muzak Corp. v Hotel Taft Corp.*, 1 NY2d 42; *Consolidated Edison Co. of N.Y. v Allstate Ins. Co.*, 98 NY2d 208; *Matter of Salvano v Merrill Lynch, Pierce, Fenner & Smith*, 85 NY2d 173; *Matter of Mostow v State Farm Ins. Cos.*, 88 NY2d 321; *Johnson City Cent. School Dist. v Fidelity & Deposit Co. of Md.*, 226 AD2d 990; *Cetta v Robinson*, 145 AD2d 820.) IV. The value of the tower crane was included in the total project value of

the insured project. V. The policy exclusion for tools and equipment is not applicable to the tower crane. (*Dean v Tower Ins. Co. of N.Y.*, 19 NY3d 704; *Miller v Continental Ins. Co.*, 40 NY2d 675; *Ace Wire & Cable Co. v Aetna Cas. & Sur. Co.*, 60 NY2d 390; *Seaboard Sur. Co. v Gillette Co.*, 64 NY2d 304; *Continental Cas. Co. v Rapid-American Corp.*, 80 NY2d 640; *North Riv. Ins. Co. v United Natl. Ins. Co.*, 152 AD2d 500; *Muzak Corp. v Hotel Taft Corp.*, 1 NY2d 42; *Green Harbour Homeowners' Assn., Inc. v G.H. Dev. & Constr., Inc.*, 14 AD3d 963; *DRK, LLC v Burlington Ins. Co.*, 74 AD3d 693; *Rocon Mfg. v Ferraro*, 199 AD2d 999.) VI. Whether or not there is other insurance is irrelevant to the interpretation of the policy. (*Continental Cas. Co. v Rapid-American Corp.*, 80 NY2d 640; *Federal Ins. Co. v Empire Mut. Ins. Co.*, 181 AD2d 568.) VII. This Court should grant Extell's motion for summary judgment on the issue of liability. (*White v Continental Cas. Co.*, 9 NY3d 264; *Jahier v Liberty Mut. Group*, 64 AD3d 683; *Japour v Ryan & Sons Agency*, 215 AD2d 817; *Saks v Nicosia Contr. Corp.*, 215 AD2d 832; *Randolph v Nationwide Mut. Fire Ins. Co.*, 242 AD2d 889; *Persky v Bank of Am. N.A.*, 261 NY 212.)

Mound Cotton Wollan & Greengrass LLP, New York City (*Philip C. Silverberg, Mark S. Katz* and *Sanjit Shah* of counsel), for respondents.

I. The Appellate Division correctly held that the tower crane does not constitute a temporary work under the policy. (*Consolidated Edison Co. of N.Y. v Allstate Ins. Co.*, 98 NY2d 208; *242-44 E. 77th St., LLC v Greater N.Y. Mut. Ins. Co.*, 31 AD3d 100; *People v Illardo*, 48 NY2d 408; *Metropolitan Life Ins. Co. v Noble Lowndes Intl.*, 84 NY2d 430; *Duane Reade, Inc. v Cardtronics, LP*, 54 AD3d 137; *Hodges v Boland's Excavating & Topsoil, Inc.*, 24 AD3d 1089; *McCoy v Kirsch*, 99 AD3d 13; *Caddy v Interborough R.T. Co.*, 195 NY 415; *York v Sterling Ins. Co.*, 114 AD2d 665; *J.P. Morgan Sec. Inc. v Vigilant Ins. Co.*, 21 NY3d 324.) II. The contractor's machinery and equipment exclusion precludes coverage for the tower crane. (*Rocon Mfg. v Ferraro*, 199 AD2d 999; *Matter of Edwards v Motor Veh. Acc. Indem. Corp.*, 25 AD2d 420; *DRK, LLC v Burlington Ins. Co.*, 74 AD3d 693; ***679** *County of Columbia v Continental Ins. Co.*, 83 NY2d 618; *Walters v Great Am. Indem. Co.*, 12 NY2d 967.)

OPINION OF THE COURT

Fahey, J.

In this action, plaintiffs seek a declaration of coverage under a program of builder's risk insurance furnished by defendants for loss—specifically, damage to a tower crane—caused by Superstorm Sandy. At issue here is the question whether the crane is covered in the first instance under the insurance provided for temporary works and, if so, whether the contractor's tools exclusion defeats that initial grant of coverage. Also at issue—and critical to our analysis—is the question whether the contractor's tools exclusion is ineffective because it would render the coverage granted in the first instance for temporary works illusory. Assuming that the policy contains coverage for the crane in the first instance, we conclude that the contractor's tools exclusion would defeat that coverage, and that such exclusion does not render the coverage afforded under the temporary works provision of the policy illusory. We therefore affirm the Appellate Division order granting summary judgment declaring that defendants have no obligation to provide coverage for the subject loss under the policy.

I.

In October 2012, plaintiff Extell West 57th Street LLC was constructing a 74-story skyscraper—commonly known as the One57 Building—at 157 West 57th Street in Manhattan. Extell had retained plaintiff Lend Lease (US) Construction LMB Inc. to act as the construction manager for that project and, in that capacity, Lend Lease had contracted with nonparty Pinnacle Industries II, LLC for certain structural concrete work with respect to that endeavor. Pursuant to its contract with Lend Lease, Pinnacle was to furnish and install, among other things, two diesel fuel tower cranes.

Only one of those cranes is at issue here. That crane was installed on a reinforced slab on the 20th floor of the building and, once all other trade work was completed at the project, it was to be dismantled and removed from the site. Several components of the crane, including beams cast into the slab and materials reinforcing the locations at which the crane was "tied" to the building as it arose next to that edifice, were designed to permanently remain part of the building upon the completion of construction.

***680** By October 29, 2012, the crane had risen approximately 750 feet from its base. On that day, Superstorm Sandy made landfall in the New York City area. One of the most dramatic images of that landfall depicts the damage caused to the crane when the boom of the crane collapsed in high winds and teetered precariously from a height equal to the top of the building. Afterwards, "[t]he . . . blocks [surrounding the building] were evacuated for six days and the crisis became a riveting symbol of the city's wounded infrastructure" (Charles V. Bagli, *As Crane Hung in the Sky, a Drama Unfolded to Prevent a Catastrophe Below*, NY Times, Nov. 6, 2012, available at

http://www.nytimes.com/2012/11/07/nyregion/drama-behind-securing-crippled-crane-in-manhattan.html).

At the time of that incident, Extell was the named insured on a program of builder's risk insurance containing coverage in the amount of $700 million, that is, the total estimated cost of the project. The program is referred to as the "policy," but it actually is an amalgamation of five separate insurance contracts, each of which was issued by a different defendant insurer and each of which covers a different percentage of the aggregate risk. Defendant Zurich American Insurance Company assumed half of the aggregate risk and furnished the "lead" policy with respect to that exposure.

At issue in this action is whether the policy covers damages sustained by Extell (the named insured) and Lend Lease (an additional insured) resulting from the weather-related harm to the crane.[1] That determination turns on whether the crane is covered under the policy in the first instance and, if so, whether the policy's contractor's tools, machinery, plant and equipment exclusion (generally, contractor's tools exclusion) defeats that coverage.[2]

Following defendants' denial and disclaimer of coverage with respect to this matter,[3] plaintiffs commenced this action seeking, among other things, a declaration that the crane is covered ***681** property under the policy, and that coverage for the crane is not subject to any policy exclusion.

Supreme Court entered an order denying the competing motions and cross motions for summary judgment that eventually were filed with respect to that coverage question, ruling that there is an issue of fact whether the contractor's tools exclusion defeats coverage for the subject loss (2015 NY Slip Op 30039[U] [Sup Ct, NY County 2015]). On appeal, however, the Appellate Division—with two Justices dissenting—modified that order by granting defendants' cross motions for summary judgment and declaring "that defendants have no obligation to provide coverage under the . . . policy" (136 AD3d 52, 61 [1st Dept 2015]). The Court held that "[t]he . . . crane was integral, not 'incidental to the project,' and therefore does not fall within the [policy's] definition of Temporary Works" (*id.* at 54). "Even if the . . . crane fell within the definition of Temporary Works," the Court added, "the contractor's tools . . . exclusion would be applicable and . . . enforceable" (*id.*).

By contrast, the dissenters would have affirmed Supreme Court's order, reasoning that there is an issue of fact whether the policy contains coverage for the crane in the first instance (*see id.* at 69 [Mazzarelli, J.P., and Richter, J., dissenting]), and that, although the contractor's tools exclusion pertains to the crane, such exclusion is unenforceable because to apply that exclusion here "would be to render coverage for temporary works illusory" (*id.* at 70). In essence, the dissenters concluded that the application of the contractor's tools exclusion effectively would defeat all of the coverage granted in the first instance by the policy's temporary works provision, and that such exclusion therefore is unenforceable as a matter of public policy.

Plaintiffs appeal to this Court as of right (*see* CPLR 5601 [a]), and we now affirm the Appellate Division order.

II.

"In determining a dispute over insurance coverage, we first look to the language of the policy" (*Consolidated Edison Co. of N.Y. v Allstate Ins. Co.*, 98 NY2d 208, 221 [2002]; *see Matter of Viking Pump, Inc.*, 27 NY3d 244, 257 [2016]). "As with the ***682** construction of contracts generally, unambiguous provisions of an insurance contract must be given their plain and ordinary meaning, and the interpretation of such provisions is a question of law for the court" (*Vigilant Ins. Co. v Bear Stearns Cos., Inc.*, 10 NY3d 170, 177 [2008] [internal quotation marks omitted]; *see Viking Pump*, 27 NY3d at 257; *Selective Ins. Co. of Am. v County of Rensselaer*, 26 NY3d 649, 655 [2016]). Of course, where "the policy may be reasonably interpreted in two conflicting manners, its terms are ambiguous" (*Matter of Mostow v State Farm Ins. Cos.*, 88 NY2d 321, 326 [1996]), and "any ambiguity must be construed in favor of the insured and against the insurer" (*White v Continental Cas. Co.*, 9 NY3d 264, 267 [2007]; *see Federal Ins. Co. v International Bus. Machs. Corp.*, 18 NY3d 642, 646 [2012]).

([1]) The question whether the policy covers the crane in the first instance turns on our interpretation of language germane to the policy's insuring agreement.[4] On this point the parties dispute whether the crane is a "temporary . . . structure[ ]" within the meaning of the policy, and whether the crane was "incidental to the project."[5] We conclude that the crane was a "structure" (*see Lewis-Moors v Contel of N.Y.*, 78 NY2d 942, 943 [1991] [defining "structure" as including "any production or piece of work artificially built up or composed of parts joined together in some definite manner"]; *see* ***683** *Joblon v Solow*, 91 NY2d 457, 464 [1998] [same]; *see also* Merriam-Webster's Collegiate Dictionary 1238 [11th ed 2003] [defining "structure" as "something (as a building) that is constructed"]). We further conclude that the crane was "temporary" in that it was anchored and

tied to the building only "during construction" and was to be "removed when . . . no longer needed." Similarly, we conclude that the parties' additional dispute as to whether the crane was "incidental to the project" is of no moment. The principal purpose of the project was the construction of the building, not the crane, and the installation and disassembly of the crane were merely incidental steps toward the completion of that edifice.

The parties also dispute whether the value of the crane was disclosed as part of the "total project value," another requirement for coverage.[6] On this record, we cannot make that determination as a matter of law. The evidence submitted with respect to the "total project value" question includes an affidavit of a Lend Lease executive, who averred that the actual market value of the crane was impliedly, but not expressly, disclosed to defendants as required for the crane to constitute a "temporary work"—and, therefore, "covered property"—within the meaning of the policy. Consequently, we agree with the dissenters at the Appellate Division to the extent they concluded that there is a triable issue of fact whether there is coverage for the subject loss in the first instance (*see* 136 AD3d at 71-72 [Mazzarelli, J.P., and Richter, J., dissenting]; *see also Platek v Town of Hamburg*, 24 NY3d 688, 694 [2015] ["it is the insured's burden to establish the existence of coverage"]; *see generally Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

III.

Although we depart from the Appellate Division order by concluding that there is an issue of fact whether the policy contains coverage for the subject loss in the first instance, we nevertheless reach the same result as that Court. Namely, we conclude that there is no coverage for that loss under the policy because any coverage afforded by that contract in the first instance is defeated by the contractor's tools exclusion. That exclusion provides that

> ***684** "[t]h[e] Policy does not insure against loss or damage to . . . Contractor's tools, machinery, plant and equipment including spare parts and accessories, whether owned, loaned, borrowed, hired or leased, and property of a similar nature not destined to become a permanent part of the **INSURED PROJECT***, unless specifically endorsed to the Policy."

([2]) " '[B]efore an insurance company is permitted to avoid policy coverage, it must satisfy the burden which it bears of establishing that the exclusions or exemptions apply in the particular case, and that they are subject to no other reasonable interpretation' " (*Dean v Tower Ins. Co. of N.Y.*, 19 NY3d 704, 708 [2012], quoting *Seaboard Sur. Co. v Gillette Co.*, 64 NY2d 304, 311 [1984] [citations omitted]). Extell, in particular, contends that defendants cannot have met that burden here because the crane is not a "tool" or "equipment" within the meaning of the contractor's tools exclusion. The subject exclusion, however, also defeats coverage for "machinery," and the crane falls squarely within this definition of that term. "Machinery" means, among other things, "machines in general or as a functioning unit," and "machine" is defined as "a mechanically, electrically, or electronically operated device for performing a task" (Merriam-Webster's Collegiate Dictionary 744 [11th ed 2003]). Although Extell submitted evidence that "components of [the crane were to] permanently remain part of the [b]uilding following the completion of construction," those "components" consisted primarily of reinforcements and ties, and the record conclusively reflects that the principal parts of the crane were "not destined to become a permanent part of the [building]" upon the completion of construction. To that end, we conclude the contractor's tools exclusion applies to the crane.

We further conclude that there is no force to plaintiffs' effort to avoid application of that exclusion on the ground that it is so broad as to render coverage afforded under the temporary works provision of the policy illusory. To be sure, "[a]n insurance agreement is subject to principles of contract interpretation" (*Universal Am. Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa.*, 25 NY3d 675, 680 [2015]), and an illusory contract—that is, "[a]n agreement in which one party gives as consideration a promise that is so insubstantial as to impose no obligation"—is "unenforceable" (Black's Law Dictionary 370 [9th ed 2009]; *see generally* ***685** *Thomas J. Lipton, Inc. v Liberty Mut. Ins. Co.*, 34 NY2d 356, 361 [1974]; *Madawick Contr. Co. v Travelers Ins. Co.*, 307 NY 111, 118 [1954]). We agree with the Appellate Division, however, that " '[a]n insurance policy is not illusory if it provides coverage for some acts [subject to] a potentially wide exclusion' " (136 AD3d at 60, quoting *Associated Community Bancorp, Inc. v St. Paul Mercury Ins. Co.*, 118 AD3d 608 [1st Dept 2014] [internal quotation marks and citation omitted]).

Indeed, the contractor's tools exclusion does not defeat *all* of the coverage afforded under the policy's temporary works provision. That exclusion would not defeat coverage initially granted for such things as the cost of erecting scaffolding, for "temporary buildings," and for such other things as "formwork, falsework, shoring, [and] fences," which are not "tools" within the meaning of the exclusion. The enforcement of the exclusion does not create a result that " 'would have the exclusion swallow

the policy' " (*Reliance Ins. Co. v National Union Fire Ins. Co. of Pittsburgh, Pa.*, 262 AD2d 64, 65 [1st Dept 1999], quoting *Camp Dresser & McKee, Inc. v Home Ins. Co.*, 30 Mass App Ct 318, 323, 568 NE2d 631, 634 [1991]). For the same reason the exclusion does not render the coverage granted under the temporary works provision illusory.

Accordingly, the order of the Appellate Division should be affirmed, with costs.

Chief Judge DiFiore and Judges Rivera, Abdus-Salaam, Stein and Garcia concur; Judge Wilson taking no part.

Order affirmed, with costs.

FOOTNOTES

Footnotes

1 Specifically, plaintiffs sought coverage for "costs . . . relat[ing] directly to stabilizing, removing, and replacing the damaged crane."

2 Detailed analyses of the relevant parts of the policy's insuring clause and contractor's tools exclusion appear in sections II and III of this opinion. Here, it bears noting only that the question whether the policy contains coverage in the first instance for the crane turns in part on whether the crane is a "temporary work," as that phrase is incorporated in the insuring clause.

3 After plaintiffs provided timely notice of their purported losses, defendants denied and disclaimed coverage for those claims through a joint letter. There, defendants maintained that the policy does not cover the subject loss in the first instance and that, even if such coverage exists, it is defeated by the contractor's tools exclusion.

4 The insuring clause provides that, "subject to the terms, exclusions, limitations and conditions contained [therein, the policy] insures against all risks of direct physical loss of or damage to Covered Property while at the location of the **INSURED PROJECT*** . . . ." The policy defines "covered property" as "the Insured's interest in," among other things, "temporary works." The phrase "temporary works," in turn, means

> "[a]ll scaffolding (including scaffolding erection costs), formwork, falsework, shoring, fences, and temporary buildings or structures, including office and job site trailers, all incidental to the project, the value of which has been included in the estimated **TOTAL PROJECT VALUE*** of the **INSURED PROJECT*** declared by the Named Insured."

For its part, the phrase "total project value" is defined as

> "[t]he total value of **PROPERTY UNDER CONSTRUCTION***, **TEMPORARY WORKS***, existing structures (when endorsed to the Policy) and **LANDSCAPING MATERIALS***; plus labor costs that will be expended in the **INSURED PROJECT***; plus site general conditions, construction management fees, and contractor's profit and overhead, all as stated in the Declarations."

5 To the extent the crane is not a "temporary . . . structure[ ]" and was not "incidental to the project," it would not constitute a "temporary work" within the policy and therefore would not be covered thereunder.

6 To the extent the value of the crane was not disclosed as part of the "total project value," the crane would not constitute a "temporary work" within the policy and therefore would not be covered thereunder.