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Don't Assume: Indemnity and Additional Insured Coverage Are Not the Same

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When a worker gets hurt on a construction site, two questions follow almost immediately: who pays the judgment, and who pays the defense? Owners and general contractors typically pursue two mechanisms to transfer risk and shift those costs to subcontractors: contractual indemnification and additional insured coverage. Most parties assume these mechanisms work in parallel.

If the indemnity clause is triggered, so is the additional insured obligation, and vice versa. The New York Court of Appeals' recent decision in *Dibrino v. Rockefeller Center North, Inc.*, 2025 N.Y. Slip Op. 07077 (Dec. 18, 2025), casts out that assumption, leaving no doubt that these two mechanisms operate under different legal standards and that the outcome under one does not control the outcome under the other.

Background

Dominick Dibrino, a carpenter employed by subcontractor Jacobson & Co., was injured at 1271 Sixth Avenue when he fell from a ladder owned by electrical subcontractor DAL Electrical Corporation. Dibrino had finished his morning work and moved his own scaffold and ladder to another floor before lunch.

When a coworker asked him to recheck measurements, Dibrino returned to the work area without his equipment, grabbed an unattended A-frame ladder belonging to DAL, and used it. He knew the ladder was not his employer's. He never asked permission to

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use it. DAL had marked it with blue tape indicating it was out of service. He used it anyway and fell.

The owner, Rockefeller Center North, and general contractor, JRM Construction Management, sought contractual indemnification from DAL under three provisions of their subcontract. The Court of Appeals affirmed the Appellate Division and held that none of those provisions required DAL to indemnify. The reasoning, and its contrast with the rules governing additional insured coverage, is the central lesson of the case.

Contractual Indemnification: The "Performance of the Work" Anchor

The subcontract between JRM and DAL contained three indemnification provisions. Articles 6.10.6 and 10.1 both required DAL to indemnify for claims "arising out of" DAL's performance of the Work as defined in the contract. The Court quickly dispatched those provisions. Dibrino's unauthorized use of an unattended ladder to perform work entirely outside DAL's electrical scope did not arise from DAL's performance of its work. As the Court put it, the nexus between DAL's contracted electrical work and Dibrino's injury was "distantly attenuated."

The real fight was over Article 12.2.1, an addendum provision that lacked the explicit "performance of the Work" restriction, but included the "arising out of" language. Rockefeller and JRM argued that this provision swept in any act or omission by DAL, including leaving a ladder unattended, regardless of whether it occurred during the active performance of DAL's contracted scope. The dissent agreed.

The majority disagreed. Reading the contract as a whole, the court held that Article 12.2.1 was still anchored by the agreement's definition of "Work" and the overall scope of DAL's obligations. Indemnification provisions, the court reaffirmed, "must be strictly construed to avoid reading into them a duty which the parties did not intend to be assumed." The court also rejected the argument that DAL's foreseeable failure to enforce its own ladder storage policy was enough to trigger indemnity. Importing tort concepts of foreseeability into contract interpretation, the court held, would render the "performance of the Work" language in the other provisions meaningless.

The practical takeaway for owners and general contractors is stark. Even broad indemnification language has limits. New York courts will read indemnity provisions strictly, tether them to the subcontractor's contractual scope when textually appropriate, and refuse to extend them to attenuated causal chains. If the injury cannot be traced to the subcontractor's performance of its defined work, the indemnification obligation will likely not be triggered.

From a contractor's perspective, this ruling highlights the importance of a well-tailored scope of work—which will not only clarify the full scope of indemnification agreed upon, but also potentially assist in a change order dispute.

Additional Insured Coverage: A Different Standard

When additional insured coverage is at issue, the analysis and outcome diverge sharply from the indemnification result and further illustrates why practitioners must treat these two mechanisms as separate and independent means of risk transfer.

The court in *Dibrino* acknowledged, and then set aside, a line of insurance cases holding that phrases like "arising out of" require only "some causal relationship" between the injury and the risk for which coverage is provided. The court correctly noted that this standard applies in the insurance context and does not govern indemnification agreements between contractors.

That distinction carries major practical consequences. Under New York law, additional insured coverage often extends to claims *arising out of* or bearing *some causal relationship* to the named insured's work, even if the causal chain is indirect. Contractual indemnification requires a closer nexus to the subcontractor's defined scope. The same facts that fail to establish contractual indemnification may be more than sufficient to trigger additional insured coverage.

Look at the *Dibrino* facts through the lens of an additional insured claim. DAL was present at the worksite performing electrical work. DAL owned and maintained the ladder. A DAL foreperson testified that he knew non-employees sometimes used DAL's tools. DAL had a policy designed to prevent exactly this kind of injury, and DAL admittedly failed to enforce it.

Under the broader causal relationship standard more often applicable to additional insured coverage, a strong argument exists that Dibrino's injury was causally related to DAL's presence and operations at the site, even if the contractual indemnity standard was not satisfied.

The Duty to Defend: The Gap Widens

The divergence between the two mechanisms grows even wider when the duty to defend enters the picture. Contractual indemnification clauses typically do not require the indemnitor to fund a defense during litigation, unless expressly required. The obligation to indemnify attaches after the liability determination. Additional insured coverage carries with it the insurer's duty to defend. That duty is notably broader than the duty to indemnify and attaches immediately where the complaint alleges facts that arguably fall within the policy's coverage.

This means that even where a court finds no contractual indemnification obligation, as in *Dibrino*, the additional insured claim may still produce both a defense and, ultimately, indemnity coverage for any judgment. The two mechanisms are complements, not substitutes, and losing one does not necessarily mean losing both. Any risk transfer program that relies exclusively on contractual indemnification, without also securing robust additional insured coverage, is leaving money on the table.

Lessons for Drafting and Contract Negotiation

Dibrino delivers several concrete lessons for owners and general contractors who use subcontracts to transfer risk:

Draft indemnification provisions with precision. Broad language is not enough because the Court will analyze the broad language through the lens of the scope of work. If the intent is to capture claims arising from a subcontractor's mere presence at the site, including equipment left unattended during breaks, say so explicitly. Do not assume that "in any way related, directly or indirectly" will do that work for you.

Include both indemnification and additional insured coverage requirements in every subcontract. Do not treat them as interchangeable. Require the subcontractor to name the owner, general contractor and other appropriate parties as additional insureds on a primary and non-contributory basis.

Require the subcontractor to submit the policy declarations page along with all endorsements identified therein, while reserving the right to a complete copy of the policy upon request. Certificates of insurance alone are wholly inadequate, as a certificate confers no legal rights and does little more than identify the party against which you will need to file suit.

Include an explicit defense obligation in the indemnification clause. Do not assume that an indemnity clause carries an immediate duty to defend. The subcontract should state expressly that the subcontractor's defense obligations include the cost of defense from the date of tender and shall not be conditioned first upon a finding of indemnity.

Account for General Obligations Law Section 5-322.1. New York's anti-indemnification statute voids provisions that require a subcontractor to indemnify an owner or general contractor to the extent of its own negligence. Indemnification language that fails to comply with the statute risks being voided entirely, leaving the owner or general contractor without any contractual protection at all.

Dibrino v. Rockefeller Center North is a useful reminder that contractual indemnification and additional insured coverage are distinct tools, governed by distinct legal standards, and neither should be taken for granted. The case also confirms a recurring theme in construction litigation: the subcontractor's liability does not depend solely on whose employee was hurt. It depends on the contractual framework the parties built, and the care with which they built it.

Owners and general contractors should review subcontract terms with their counsel in light of *Dibrino*, and immediately address any language that would unintentionally limit the scope of indemnification owed by subcontractors.

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