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State of New York Court of Appeals

In the Matter of the Claim of

JOSE REYES BONILLA and MARVIN REYES BONILLA,
Respondents,

v.

XL SPECIALTY INSURANCE, aka INTERCARGO INS. CO. et al., Appellants, et al., Respondent,
and

LIBERTY MUTUAL FIRE INS. CO., Respondent,

WORKERS' COMPENSATION BOARD, Respondent.

June 27, 2023

Facts: The claimants were traveling in a van to a jobsite when they were involved in a motor vehicle accident. XL Specialty Insurance was placed on notice for a wrap up policy they had for the Brooklyn jobsite where the claimants were traveling. XL Specialty failed to appear at multiple hearings to defend against the claims. The WCLJs in each case established the claims against XL Specialty noting that the wrap up policy for the site would have afforded coverage to the claimant's motor vehicle accident.

Holding: *Affirmed.*

Discussion: The claimants would meet a train station parking lot and were picked up by a van that the employer provided. The employer directed the claimants to use that van to transport them to the jobsite in question and that van was involved in a motor vehicle accident. As the employer took responsibility for the inherent risks of transporting workers from the work site and had exclusive control of the conveyance, the Court found no reason to disturb the Board's determination that claimants' injuries arose out of and in the course of their employment.

Furthermore, the policy endorsement does not specifically exclude coverage for an accident traveling to and from the site in question and would cover a compensable accident that occurred while traveling to the site covered by the policy. The endorsement

in XL Specialty's policy covered activity "incidental to the described project" and "other similar areas dedicated to the project that are under the control of XL Specialty which the Court found sufficient to establish coverage and liability.

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