CHARLES ROUNDTREE AND BETTY SMITH ROUNDTREE	*	**NO. 2004-CA-0702**
	*	**COURT OF APPEAL**
VERSUS		
	*	**FOURTH CIRCUIT**
THE NEW ORLEANS AVIATION BOARD, NEW ORLEANS INTERNATIONAL AIRPORT AND/OR THE CITY OF NEW ORLEANS; POWELL INSURANCE COMPANY AND XYZ INSURANCE COMPANY	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 96-4058, DIVISION "N-8"
Honorable Ethel Simms Julien, Judge
* * * * * *
Judge Patricia Rivet Murray
* * * * * *

(Court composed of Judge Patricia Rivet Murray, Judge Leon A. Cannizzaro, Jr., Judge Roland L. Belsome)

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**AFFIRMED IN PART;
REVERSED IN PART;
AND REMANDED**

This is an insurance coverage dispute. The dispute is whether the commercial general liability policy issued by Agricultural Excess and Surplus Insurance Company ("Agricultural") to G.P. Glynagin Enterprises, Inc. (“Glynagin”), a subcontractor, provides coverage for two alleged additional insureds: (i) Glynagin’s contractor, Hamp’s Enterprise, Inc. (“Hamp’s); and (ii) the property owner, the New Orleans Aviation Board, the New Orleans International Airport, and the City of New Orleans (collectively "the New Orleans Defendants”). From the trial court’s decision granting Agricultural’s motion for summary judgment based on its finding of no coverage, the New Orleans Defendants, Hamp’s, and Scottsdale Insurance Company (“Scottsdale”)(Hamp’s insurer) appeal. For the following reasons, we reverse in part, affirm in part, and remand for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

On March 14, 1995, Charles Roundtree, a Glynagin employee, was injured while in the course and scope of his employment. At the time of the accident, Mr. Roundtree was inspecting a roof on a house owned by the New Orleans Defendants in preparation for removing the asbestos shingles. As Mr. Roundtree probed the wood underneath the roof shingles, the roof allegedly caved in, causing him to injure his knee.

On March 14, 1996, Mr. Roundtree and his wife filed suit against the New Orleans Defendants. The New Orleans Defendants answered, denying liability. On April 26, 1999, the New Orleans Defendants filed a third party demand against Glynagin and its insurer, Agricultural. The New Orleans Defendants alleged that an indemnification agreement existed among the New Orleans Defendants, Hamp's, and Glynagin. The New Orleans Defendants further alleged that Glynagin contracted to defend Hamp's and the New Orleans Defendants for any acts or omissions of Glynagin or its employees and that Agricultural had issued a policy of insurance naming Hamp's and the New Orleans Defendants as additional insureds.

On June 1, 1999, Agricultural answered, denying that its policy provided coverage as alleged, claiming that its policy specifically excluded

such coverage, and denying that Glynagin owed indemnity to the New Orleans Defendants.

On December 15, 2000, the Roundtrees filed a supplemental and amended petition adding three defendants: Hamp's, Scottsdale, and Agricultural. They alleged that Hamp's was liable pursuant to La. Civ.Code arts. 2315, 2316 and 2317 and that Hamp's failed to take adequate precautions to prevent Mr. Roundtree's injuries.

On December 14, 2001, Scottsdale filed a motion for summary judgment seeking to be dismissed from the suit on the grounds that Agricultural's insured, Glynagin, had agreed to indemnify and defend the New Orleans Defendants and Hamp's. Alternatively, Scottsdale argued that the court should declare Scottsdale and Agricultural to be co-primary insurers.

Agricultural, as both a direct and a third party defendant, and Glynagin, as a third party defendant, also filed a motion for summary judgment. They argued that neither Glynagin nor Hamp's owed indemnification to the New Orleans Defendants. Continuing, they argued that neither the contract between Glynagin and Hamp's nor the contract

between Hamp's and the New Orleans Defendants provided indemnification for either Hamp's or the New Orleans Defendants' own negligence.

On April 5, 2002, the trial court granted Scottsdale's motion for summary judgment motion, but denied Glynagin's and Agricultural's motion. On Agricultural's appeal, we reversed the trial court, reasoning:

> The plain language of the indemnity agreement in question indicates that Glynagin agreed to defend Hamp's in any action brought against Hamp's for any acts or omissions of Glynagin. There is nothing in the entire contract between the parties to suggest that Glynagin agreed to indemnify either Hamp's for Hamp's own negligence or strict liability, or the New Orleans defendants for their own negligence and/or strict liability. Plaintiffs have alleged that Hamp's was negligent for failing to warn Mr. Roundtree about the dangerous roof condition. That issue has yet to be decided. Thus, it was error for the trial court to order Glynagin to defend Hamp's against the allegations made specifically against Hamp's. In turn, it was error for the trial court to order Glynagin to defend the New Orleans defendants because Glynagin *was not contractually bound to indemnify* the New Orleans defendants in any way.

Roundtree v. New Orleans Aviation Bd., 2002-1757, p. 9 (La. App. 4 Cir. 4/9/03), 844 So. 2d 1091, 1096, *writ denied*, 2003-1331 (La. 9/19/03), 853 So. 2d 639 (emphasis in original).

In our prior opinion, we declined to reach the insurance coverage issues presented in this case because the trial court had not decided those issues. We thus remanded this case to the trial court for resolution of those

issues. On remand, Agricultural filed a second motion for summary judgment seeking a determination that it did not provide coverage to either Hamp's or the New Orleans Defendants. Hamp's, the New Orleans Defendants, and Scottsdale filed a cross motion for summary judgment seeking a determination that Agricultural's policy did provide coverage and that its coverage was primary.

On December 23, 2003, the trial court rendered judgment granting Agricultural's motion for summary judgment and declaring the cross motions moot. This appeal followed.

APPELLATE JURISDICTION

Before reaching the merits of this appeal, we first must address the jurisdictional issue of whether the trial court's judgment is a final judgment for purposes of immediate appeal under La. C.C.P. art. 1915. Under the present version of La. C.C.P. art. 1915(B), as amended in 1999, the trial court's December 23, 2003 judgment dismissing Agricultural would be a final judgment under La. C.C.P. art. 1915(A), and would be appealable under La. C.C.P. art. 1911, which provides that "[a]n appeal may be taken from a final judgment under Article 1915(A) without the judgment being so designated." La. C.C.P. art. 1911. The Legislature, however, limited the effectiveness of the 1999 amendment to "actions filed on or after January 1,

2000." Because this action was filed on March 14, 1996, the 1997 version of Article 1915(B) applies.

Under the applicable version of Article 1915(B)(1), in order for the December 23, 2003 judgment to be appealable, the trial court was required to both (i) designate it as final, and (ii) make an express determination that there was no just reason to delay appealing it. Stated differently, the trial court was required to make two separate determinations: (i) whether the judgment is a final one, as opposed to an interlocutory one ("finality determination"); and (ii) assuming a final judgment, whether there is any just reason for delaying the appeal of that judgment ("certification decision").

On February 19, 2004, the trial court, at the parties' request, issued an order certifying the judgment in Agricultural's favor "as a final judgment in accordance with La. C.C.P. Art. 1915, for all purposes, including appeal thereof." The trial court's designation of this judgment as a final one is clearly correct because it dismisses a party from the suit. *See* La. C.C.P. art 1841. However, under this court's jurisprudence, the trial court's certification of this judgment is arguably deficient in three respects.

The first deficiency is that the trial court failed to recite in its order the statutory language "there is no just reason for delay." Under the facts of this

case, we find the trial court's express reference to the statutory provision in its order was sufficient. To hold otherwise would be to place form over substance.

The second deficiency is that when the original notice of appeal was filed, the trial court had not issued a certification order. The Appellants cured this deficiency by obtaining a certification order from the trial court on February 19, 2004, and thereafter timely filing a new notice of appeal. This case thus does not present a post-appeal certification issue.

The third deficiency is that the trial court failed to give explicit reasons for its determination that there is no just reason for delay. Unlike the other two deficiencies, resolution of this deficiency requires an extensive analysis.

In a line of cases, this court has adopted a "no-reasons, no-jurisdiction" certification rule. That line of cases holds that a trial court must give explicit reasons, on the record, articulating why it determined that there is no just reason for delay. That line of cases also holds that the trial court's mere parroting of the statutory language "there is no just reason for delay" is insufficient. However, this court's jurisprudence has not consistently followed this rule. Moreover, this court recently held that this court "review [s] the certification on a case by case basis taking into consideration the

totality of what was intended and whether in context conclusory statements equate to adequate reasons." *LHO New Orleans LM, L.P. v. MHI Leasco New Orleans, Inc.*, 2003-1283, p. 7 (La. App. 4 Cir. 3/3/04), 869 So. 2d 304, 308.

Our research reveals that none of the other four circuit appellate courts currently follows a "no-reasons, no jurisdiction" rule. Indeed, two of the other circuits have expressly declined to follow this court's line of cases espousing that rule. Our research further reveals that the federal Fifth Circuit has construed the verbatim "express determination" language in Rule 54(b) of the Federal Rules of Civil Procedure (from which the Legislature patterned La. C.C.P. art. 1915(B)(1)) as not requiring the district court to give reasons for its finding of no just reason for delay, *i.e.*, certification decision. *Kelly v. Lee's Old Fashioned Hamburgers, Inc.*, 908 F.2d 1218 (5th Cir. 1990).

In *Kelly*, the federal Fifth Circuit noted that the "express determination" requirement serves a dual purpose: (i) reducing "`the uncertainty and the hazard assumed by a litigant who either does or does not appeal from a judgment of the character we have here;'" and (ii) providing the litigants an opportunity to obtain from the district court "`a clear statement of what that court is intending with reference to finality.'" *Kelly*,

908 F.2d at 1221 (quoting *Dickinson v. Petroleum Conv. Corp.*, 338 U.S. 507, 512, 70 S.Ct. 322. 324, 94 L.Ed. 299 (1950)). Considering those purposes, the court concluded that the express determination requirement is satisfied "when the order alone or the order together with the motion or some other portion of the record referred to in the order contains clear language reflecting the court's intent to enter the judgment under Rule 54 (b)." *Kelly*, 908 F.2d at 1221.

Given that this court's "no-reasons, no-jurisdiction" rule apparently is out of step with the jurisprudence of both the federal Fifth Circuit and all four other state appellate circuits, coupled with the inconsistency within this court's own jurisprudence regarding the application of this rule, this court has submitted the issue of the correct construction of the certification requirement under Article 1915(B)(1) to an *en banc* vote. As a result of that vote, this court has determined that La. C.C.P. Art. 1915(B)(1) only requires the trial court to make an express determination that the judgment is final and that there is no just reason to delay taking an appeal; it does not require that the trial court give explicit reasons for its certification decision. Although the preferable procedure is for the trial court to articulate the reasons for its decision so as to facilitate appellate review of that decision, a trial court's failure to give reasons is not a jurisdictional defect. This

court's line of jurisprudence to the contrary is overruled.

Applying these principles to the instant case, we find the express determination requirement of Article 1915(B)(1) was satisfied. Although the trial court did not give explicit reasons, we find the reasons for its certification decision are apparent from the record for two reasons. First, as noted above, the trial court's judgment resulted in a dismissal of a party and would be a final judgment under Article 1915(A) as amended in 1999. Second, insurance coverage issues were expressly recognized as appropriate for partial summary judgment under former La. C.C. art 966 (F), which provided that "[a] summary judgment may be rendered on the issue of insurance coverage alone although there is a genuine issue as to liability or the amount of damages;" Article 966(F) was repealed in 1997 as part of the same legislative act that amended Article 1915.

We further find that because the trial court's reasons for its certification decision are apparent from the record, it is appropriate that we apply an abuse of discretion standard to review that decision. Under the circumstances presented in this case, we find the trial court did not abuse its discretion in certifying that there is no just reason to delay appealing this judgment under La. C.C.P. art. 1915(B)(1).

DISCUSSION

Appellate courts review summary judgments *de novo* under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Reynolds v. Select Properties, Ltd*., 93-1480 (La. 4/11/94), 634 So.2d 1180, 1183. A summary judgment declaring no coverage under an insurance policy may not be rendered unless "there is no reasonable interpretation of the policy, when applied to the undisputed material facts shown by the evidence supporting the motion, under which coverage could be afforded." *Id.*

In *Louisiana Ins. Guar. Ass'n v. Interstate Fire & Cas. Co*., 93-0911 (La. 1/14/94), 630 So.2d 759, the Louisiana Supreme Court outlined the elementary principles for construing insurance policies, stating:

> An insurance policy is a contract between the parties and should be construed using the general rules of interpretation of contracts set forth in the Civil Code. The judicial responsibility in interpreting insurance contracts is to determine the parties' common intent.
>
> The parties' intent as reflected by the words in the policy determine the extent of coverage. Such intent is to be determined in accordance with the general, ordinary, plain and popular meaning of the words used in the policy, unless the words have acquired a technical meaning.
>
> An insurance policy should not be interpreted in an unreasonable or strained manner so as to enlarge or to restrict its provisions beyond what is reasonably contemplated by its terms or so as to achieve an absurd conclusion. Absent a conflict with statutory provisions or public policy, insurers, like other individuals, are entitled to limit their liability and to impose and to enforce reasonable conditions upon the policy

obligations they contractually assume.

> Ambiguity in an insurance policy must be resolved by construing the policy as a whole; one policy provision is not to be construed separately at the expense of disregarding other policy provisions.

Id. at 763-64 (internal citations omitted).

The insurance policy in question in this case is a commercial general liability ("CGL") policy. CGL policies are designed to protect the insured against losses to third parties that arise out of the insured's business operations. 9 Lee R. Russ and Thomas F. Segalla, *Couch on Insurance* 3d, § 129:2 (1997)("*Couch on Insurance* 3d"). CGL policies typically exclude from coverage personal injuries to employees. *Couch on Insurance* 3d, § 129:3. "The primary purpose of an employee exclusion clause is to draw a sharp line between employees and members of the general public." *Id.* Application of an employee exclusion clause to an additional insured tends to be "problematic." *Couch on Insurance* 3d, §129:6. Although the additional insured's employees are excluded by such exclusionary clauses, "[a]n 'employee' exclusion does not apply where the additional insured is not the employer of the injured party." *Id.*

The issue presented on this appeal is the coverage, if any, of Hamp's and the New Orleans Defendants as additional insureds under the CGL policy Agricultural issued to Glynagin. As required by the contract between

Glynagin and Hamp's, the contractor, Hamp's, was added as an additional insured. The policy also contains a provision defining the property owner as an additional insured. The New Orleans Defendants rely on that provision in support of their contention that they are additional insureds.

In analyzing the coverage issues presented, we first note that Agricultural's policy contains a "separation or severability" provision, which provides that the insurance applies:

> a. as if each Named Insured were the only Named Insured; and
>
> b. separately to each Insured against whom claim is made or "suit" is brought.

Such severability provisions, in effect, require the policy be construed as providing separate coverage for each insured, *i.e.*, "as if each was separately insured with a distinct policy." *Atchison, Topeka and Santa Fe Ry. Co. v. St. Paul Surplus Lines Ins. Co*., 328 Ill. App. 3d 711, 716, 767 N.E.2d 827, 831, 263 Ill. Dec. 101 (Ill. App. 1 Dist. 2002). Moreover, such severability provisions have "the effect of rendering the employee exclusion inapplicable where an employee of one insured is injured by the other insured." *Couch on Insurance* 3d, §129:6.

With those principles in mind, we separately analyze the coverage issue presented as to each of the alleged additional insureds, Hamp's and the New Orleans Defendants.

COVERAGE OF HAMP'S

Hamp's was added as an additional insured by the following endorsement:

> IN CONSIDERATION OF THE ADDITIONAL MINIMUM PREMIUM OF $688; IT IS HEREBY UNDERSTOOD AND AGREED HAMP ENTERPRISES, INC. IS ADDED AS AN ADDITIONAL INSURED PER FORM GA17507 ATTACHED *BUT ONLY AS RESPECTS TO THE ASBESTOS ABATEMENT OPERATIONS BEING PERFORMED FOR VARIOUS BUILDINGS OF THE NEW ORLEANS AIRPORT.* (Emphasis supplied.)

Although Agricultural acknowledges that Hamp's is an additional insured, it contends that the following exclusionary endorsement applies and excludes coverage of Hamp's for the personal injury claim asserted by the Roundtrees; to-wit:

> ADDITIONAL EXCLUSION - BODILY INJURY TO EMPLOYEES OR PRINCIPALS OF THE OWNER, LESSEE, OR REAL ESTATE MANAGER OF THE "DESIGNATED PREMISES" OR OF A CONTRACTOR OR SUBCONTRACTOR.
>
> This endorsement modifies insurance provided under the following:
>
> > COMMERCIAL GENERAL LIABILITY COVERAGE PART GA1 75 02 10 89
>
> In consideration of the premium charge, it is understood and agreed that this insurance does not apply to:
>
> "Bodily Injury" to:
>
> * * *

> c) An employee or principal of a subcontractor of the insured if they are or were in an "asbestos abatement area" where "asbestos abatement operations" are or were being performed at a "scheduled project" and "designated premises."

Under Agricultural's reading of this exclusionary endorsement, coverage is excluded because an employee (Mr. Roundtree) of the insured's (Hamp's') subcontractor (Glynagin) was injured while performing asbestos abatement operations in an asbestos abatement area.

Appellants do not contest (indeed the Roundtrees' petition alleges) that Mr. Roundtree was injured while performing asbestos abatement operations in an asbestos abatement area. Rather, they contest the applicability of this exclusionary endorsement. They contend that applying this endorsement gives rise to an ambiguity and that, under a settled jurisprudential rule, such an ambiguity must be construed in favor of coverage. *See Ledbetter v. Concord General Corp*., 95-0809, p. 4 (La. 1/6/96), 665 So. 2d 1166, 1169. According to Appellants, the ambiguity arises because this exclusionary endorsement for asbestos abatement operations essentially eviscerates the asbestos abatement only coverage that the endorsement adding Hamp's as an additional insured creates.

Applicants contend the exclusionary endorsement on which Agricultural relies is invalidated by the Designated Project Endorsement, which provides:

LIMITATION OF COVERAGE TO DESIGNATED PROJECT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Project: ASBESTOS ABATEMENT OPERATIONS AS DEFINED IN THE POLICY.

This insurance applies only to "bodily injury," "property damage," "personal injury," "advertising injury" and medical expenses arising out of:

1. the project shown in the Schedule [“Asbestos Abatement Operations as Defined in the Policy”].

Cross-referencing the policy provisions and definitions, Appellants contend that Agricultural’s policy clearly provides coverage to Hamp’s “for bodily injury . . . arising out of ‘asbestos abatement operations.’” They emphasize that the endorsement adding Hamp’s as an additional insured limits the coverage it creates to “asbestos abatement operations.”

Agricultural replies that the reason for the inclusion of the “asbestos abatement operations” language in the endorsement adding Hamp’s is to define the particular project for which coverage is provided. Stated otherwise, it replies that the purpose this limitation serves is to confine Hamp’s insured’s status to this particular project as opposed to any project that Hamp's may have been performing. Agricultural submits that in the

endorsement adding Hamp's it chose to use the phrase "asbestos abatement operations" to reference this project as that is the most efficient way of describing the work Glynagin was performing for Hamp's. Agricultural emphasizes that the pertinent limiting language in that endorsement is not only "asbestos abatement operations," but rather "the asbestos abatement operations being performed for various buildings of the New Orleans Airport." Agricultural emphasizes that when this endorsement adding Hamp's is read in context, it unambiguously provides that the coverage created for Hamp's is limited to the particular project Glynagin was performing, which was asbestos abatement operations for various buildings at the New Orleans Airport.

Answering Appellants' argument that this reading of the policy eviscerates the asbestos abatement only coverage it provides to Hamp's, Agricultural gives the following illustration of the type of claim that would be covered: "a Hamps' [sic] employee was using a wrecking ball to demolish a house and accidentally struck a passing vehicle, causing personal injury to the driver." That driver's claim against Hamp's would be covered. Agricultural's illustration of the extent of coverage provided to Hamp's is consistent with the general principle, noted above, that CGL policies typically include employee exclusions to draw a distinct line between

excluded employee claims and covered claims by members of the general public, such as the driver in the illustration.

The trial court apparently found Agricultural's argument persuasive as it granted its summary judgment motion. So do we. Contrary to Appellants' argument, the exclusionary endorsement for employees of the insured's subcontractor is not ambiguous. As noted above, the severability of insureds provision requires we view Hamp's as the insured. Viewing the policy from the perspective of coverage for Hamp's, Mr. Roundtree was only an employee of Hamp's' subcontractor, Glynagin. Since Mr. Roundtree was an employee of the insured's (Hamp's') subcontractor, this exclusion applies. Hence, the policy does not provide coverage to Hamp's for the claim asserted in this case.

COVERAGE OF NEW ORLEANS DEFENDANTS

Although the policy does not expressly add the New Orleans Defendants as additional insureds, it includes an endorsement naming the property owner as an additional insured, which provides:

> ADDITIONAL INSURED – PROPERTY OWNERS AND PROPERTY – REAL ESTATE MANAGEMENT FIRMS

> This endorsement modifies insurance provided under the following:
>
> COMMERCIAL GENERAL LIABILITY COVERAGE PART
>
> WHO IS AN INSURED (SECTION II) is amended to include as an Insured, all property owners and property - real estate management firms, but only with respect to liability arising out of "your work" for that Insured by you.

As noted, the New Orleans Defendants contend that they are covered as additional insureds under this property owner endorsement. They argue that Mr. Roundtree's injuries arose while he was performing asbestos abatement operations for Glynagin on the New Orleans Defendants' property. They further argue that it was because of Glynagin's asbestos removal subcontract that Mr. Roundtree was present on their property when he was injured on the roof. As a result, the New Orleans Defendants contend that they are additional insureds.

Agricultural counters that the New Orleans Defendants are not covered by this property owner endorsement. In support, it cites the limitation in this endorsement to "liability arising out of 'your work' for that insured by you," and the policy definition of "your work" as "work or operations performed by you or on your behalf." Because Glynagin had no contract with the New Orleans Defendants, Agricultural argues that Glynagin was performing no work for the New Orleans Defendants. Under

Argicultural's reading, Glynagin was performing work only for Hamp's.

Agricultural's narrow reading of this endorsement is contrary to the jurisprudence, which has broadly construed such endorsements. In *Gates v. James River Corp. of Nevada*, 602 So. 2d 1119 (La. App. 1 Cir.1992), the endorsement provided coverage for the owner as an additional insured only with respect to "liability arising out of your [the contractor's] work for that insured [the owner]." The insurer argued that there was no coverage because the contractor, who was performing warranty work, was not working for the owner but rather for a manufacturer of the machine that electrocuted the employee. Rejecting that argument, the court in *Gates* reasoned that as long as the benefit of the contractor's work flowed ultimately to the owner, the owner was an additional insured. *See also Baker v. Sears, Roebuck & Co*., 32,651, 32,767 (La. App. 2 Cir. 3/3/00), 753 So. 2d 1011; *Fleniken v. Entergy Corp*., 99-3024, (La. App. 1 Cir. 2/16/01), 790 So. 2d 64. Consistent with that jurisprudence, we find the New Orleans Defendants are additional insureds under the property owner endorsement.

Agricultural next argues that even assuming additional insured status, the New Orleans Defendants, like Hamp's, are excluded from coverage by the exclusionary endorsement for an employee of the insured's subcontractor. We disagree. In order for this exclusionary endorsement to

apply, Glynagin (Mr. Roundtree's employer) must be the New Orleans Defendants' subcontractor. Glynagin clearly is not; Glynagin is Hamp's' subcontractor. Indeed, Glynagin has no contract with the New Orleans Defendants. Agricultural's reliance on this exclusion is thus misplaced.

Applicants' final argument is that we should rank Agricultural's and Scottsdale's policies. Agricultural counters that this issue is not properly before us. For two reasons, we agree. First, the trial court did not reach this issue as it denied the Appellants' cross motion for summary judgment. Second, although the parties represent that the "other insurance" provision in Scottsdale's policy is identical to the one in Agricultural's policy, the portion of Scottsdale's policy containing that provision is not in the record of this appeal. For these reasons, we thus decline to reach this issue.

DECREE

For the foregoing reasons, the judgment of the trial court is reversed insofar as it found no coverage for the New Orleans Defendants. In all other respects, the judgment is affirmed, and this case is remanded to the trial court for further proceedings consistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART; AND REMANDED