

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOSHUA DONAHUE and ANGELA BOLTON

CIVIL ACTION

VERSUS

NO. 16-13948

REPUBLIC NATIONAL DISTRIBUTING
COMPANY, LLC and DARANA HYBRID, INC.

SECTION "N" (1)

ORDER AND REASONS

Presently under submission in this matter are two motions for summary judgment (Rec. Docs. 61 and 66). The motion filed by Third-Party Defendant United States Fire Insurance Company ("U.S. Fire") first seeks a determination that Republic National Distributing Company ("Republic") is not entitled to contractual indemnity from U.S. Fire pursuant to the contract ("Project Agreement") (Rec. Doc. 66-3) entered into by Republic and Defendant W&H Systems, Inc. ("W&H"). *See* Rec. Doc. 61-1, p.1). Considering that Republic's memoranda do not oppose this aspect of U.S. Fire's motion, which further appears to have merit, **IT IS ORDERED** that U.S. Fire's motion for summary judgment is **GRANTED IN PART**, i.e. with respect to "contractual indemnity."

The remainder of U.S. Fire's motion and the entirety of Republic's motion both address the disputed applicability of Endorsement 101.0.1206 01 11 at ¶15, "Additional Insureds By Written Contract" to the commercial general liability insurance policy U.S. Fire issued to W&H. It states:

15. Additional Insureds By Written Contract

Section II – Who Is An Insured is amended to include as an additional insured, any person or organization whom you are required to add as an additional insured to this policy by written contract or written agreement that is:

- a. Currently in effect or becoming effective during the term of this policy; and
 - b. Executed prior to the “bodily injury”, “property damage” or “personal and advertising injury”.
1. The insurance provided to the additional insured applies as follows:

(a) That person or organization is only an additional insured with respect to *liability* for “*bodily injury*”, “*property damage*” or “*personal and advertising injury*” *caused by your negligent acts or omissions at or from:*

- (i) *Premises* you own, rent, lease or occupy; or
- (ii) *Your ongoing operations* performed for the additional insured at the jobsite indicated by the written contract or written agreement.

See Rec. Doc. 66-4 at p. 9 of 34 (emphasis added).

Having carefully considered the parties' submissions, applicable law, and the remainder of the record in this matter, the Court is not sufficiently convinced that this additional insured provision – particularly in light of the italicized language – is unambiguous. Nevertheless, given the posture of this matter, the Court finds this issue more appropriately considered, if necessary, after (or, if so ordered, in connection with) the separate motions for summary judgment filed by the same parties, regarding Endorsement CG 20 10 04 13, which presently are set to be taken under submission (by another section of this Court) on May 23, 2018. *See* Rec. Docs. 100 and 104. Endorsement CG 20 10 04 13 states, in pertinent part:

**Additional Insured – Owners, Lessees, and Contractors –
Scheduled Person or Organization**

This Endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury,” “property damage” or “personal and advertising injury” caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

See Rec. Doc. 66-4, p. 15 of 34.

Accordingly, for the reasons set forth above, **IT IS ORDERED** that U.S. Fire's motion for summary judgment is **GRANTED IN PART** (relative to contractual indemnity) and **DENIED WITHOUT PREJUDICE IN PART** (relative to additional insured status). **IT IS FURTHER ORDERED** that Republic's motion for summary judgment (Rec. Doc. 66) is **DENIED WITHOUT PREJUDICE**.

New Orleans, Louisiana, this 18th day of May 2018.


**KURT D. ENGELHART
UNITED STATES JUDGE**