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CONSTRUCTION LAW BLOG

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New Jersey Supreme Court Holds CGL Policies Cover Developer/General Contractor for Damage Caused by Subcontractor's Faulty Workmanship

BY:

The New Jersey Supreme Court recently considered whether damage caused by a subcontractor's faulty workmanship constitutes property damage caused by an occurrence under a developer/general contractor's commercial general liability policies. In *Cypress Point Condo. Ass'n v. Adria Towers, L.L.C.*, 2016 N.J. LEXIS 847 (N.J. Aug. 4, 2016), the Court held that such damage resulted from an "occurrence" to trigger coverage under the policies and that the subcontractor exception to the "your work" exclusion applied. With the holding, the Court fell in line with the trend among courts across the country that have found such damage to be covered.

Adria Towers acted as one of the developers/general contractors of the Cypress Point luxury condominium complex in Hoboken, which was constructed by subcontractors between 2002 and 2004. Evanston Insurance Company and then Crum & Forster Specialty Insurance Company insured Adria Towers from 2002 to 2009 under successive standard post-1986 ISO CGL policies. After construction was completed and control was turned over to the Association, the Association noticed leaks and water infiltration into the interior structure and sued, alleging faulty workmanship during construction, including but not limited to, defectively built or installed roofs, gutters, brick facades, exterior insulation and finishing system siding, windows, doors, and sealants. The Association claimed consequential damages, consisting of, among other things, damage to steel supports, exterior and interior sheathing and sheetrock, and insulation, to common areas, interior structures, and residential units. Adria Towers demanded a defense from Evanston, which refused. Eventually, the Association sought a judicial declaration regarding Evanston's obligations under its policies, and Evanston brought Crum & Forster into the suit. The trial court granted summary judgment in favor of Evanston but the appellate court reversed. The New Jersey Supreme Court granted the insurers' petition for certification.

The Supreme Court began its analysis by discussing the history of the ISO CGL policy, specifically the 1986 version's definition of "occurrence" and the subcontractor exception to the "your work" exclusion. As the court noted, the policies defined "occurrence" as an "accident" and found "that the term 'accident' … encompasses unintended and unexpected harm caused by negligent conduct." Further, the Court noted that the subcontractor exception to the "your work" exclusion was the result of an agreement between insurers and policyholders that CGL policies should provide coverage for damage caused by a subcontractor's bad work. Thus, the Court rejected the insurers' argument that faulty workmanship could not result in coverage.

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Next, the Supreme Court discussed New Jersey precedent, including the seminal *Weedo v. Stone-E-Brick, Inc.*, 405 A.2d 788 (N.J. 1979), which has been cited by courts across the country for the proposition that CGL policies do not cover construction defects. The Supreme Court explained that the insurer in *Weedo* conceded that the policy initially provided coverage but that the "your work" exclusion precluded coverage for the insured's defective work. The Court distinguished *Weedo* because that case did not address whether the alleged faulty workmanship constituted a covered "occurrence" and the policy at issue in that case did not contain the subcontractor exception (i.e. the exception to this exclusion "if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor"). The Supreme Court also surveyed case law from other states, finding a trend "interpreting the term 'occurrence' to encompass unanticipated damage to nondefective property resulting from poor workmanship."

Finally, the Supreme Court turned to the case before it and applied a three-step analysis: First, the Court considered whether the policies initially granted coverage; second, whether an exclusion applied; and third, whether an exception to the exclusion applied. The Court held that "consequential harm caused by negligent work is an 'accident'"; therefore, the damage caused by the subcontractors was an occurrence and triggered the policies' insuring agreement. Next, the Court found that the "your work" exclusion "would seem to eliminate coverage" but that the subcontractor exception applied to restore coverage.

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