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Supreme Court of New Jersey Joins Growing Group of Jurisdictions Holding That Work of a Subcontractor That Causes Resultant Damage is Both an "Occurrence" and "Property Damage" under a Standard Form Commercial General Liability Policy

In a recent significant decision, the Supreme Court of New Jersey held that defective work of a subcontractor that causes consequential property damage is both an "occurrence" and "property damage" under the terms of a standard form commercial general liability ("CGL") insurance policy. Cypress Point Condominium Assoc., Inc., v Adria Towers, L.L.C., 2016 N.J. Lexis 847 (Aug. 4, 2016). This decision is important in New Jersey and in other jurisdictions that had relied upon the influential New Jersey case, Weedo v. Stone–E–Brick, Inc., 81 N.J. 233 (1979), that had determined that such claims involved non-insured "business risks." Despite the fact that standard insurance forms were amended after the Weedo decision to extend coverage for damages caused by the defective work of subcontractors, some courts and many insurers had continued to rely upon its "business risk" doctrine to deny defense and coverage. Such denials will be much more difficult after the Cypress Point decision, which specifically explains the Weedo decision and holds that it does not prevent coverage under the most common forms of CGL policies currently in use for damages caused by a subcontractor's defective work.

In Cypress Point, the condominium association sued the developer/general contractor and several of its subcontractors alleging faulty workmanship during construction had caused physical damage to common elements and individual dwellings as well as loss of use. The developer/general contractor requested its insurance carrier to defend the claims. After the carrier refused, the condominium association amended its complaint seeking a declaration that the damages it claimed were covered under the developer/general contractor's CGL policies.

On summary judgment, the trial court ruled that the claims were not covered relying upon the Weedo decision and other New Jersey precedents. An appellate court reversed the trial court's decision and the New Jersey Supreme Court upheld the appellate court's decision. Both the appellate court and the New Jersey Supreme Court based their determinations on the language of the insurance policies in question which were modeled after the standard form CGL policy promulgated by the Insurance Services Office, Inc. ("ISO").

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The CGL policies provided coverage for "those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' ... caused by an 'occurrence' that takes place in the 'coverage territory' ... [and] ... occurs during the policy period." Under the terms of the policies, "property damage" included "[p]hysical injury to tangible property including all resulting loss of use of that property." An "occurrence" was defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

The New Jersey Supreme Court concluded that the subcontractors' faulty workmanship and resultant damages constituted an "occurrence" triggering an initial grant of coverage, in part because the term "accident" should be interpreted as encompassing unintended and unexpected harm caused by negligent conduct.

In holding for coverage, the Court rejected a number of arguments not grounded in the policy language including the contention that "established law [provides] that CGL policies are only intended to provide coverage for damage caused by faulty workmanship to *other* property and not to the project itself." The Court also rejected an argument that coverage was precluded by policy language excluding coverage for "property damage" to "your work," noting that an exception to this exclusion, which was added to the 1986 ISO standard form CGL policy, expressly declares that it does not apply if the damaged work or work out of which the damage arises was performed by a subcontractor.

The Court noted that its decision was consistent with "a strong recent trend" in other jurisdictions interpreting the term "occurrence" to encompass unanticipated damage to non-defective property resulting from poor workmanship.

It is important to recognize that the Cypress Point decision is based upon the specific language of the insurance contract and that insurers are free to amend the standard form of its CGL policies via a rider or amendment to reallocate the risk of subcontractor's negligence to the insured. By the same token, insureds are free to request broader coverage.

Please feel free to contact P&A if you would like to discuss how we can help with analysis of your insurance program or the handling of claims.