US Appeals Court Upholds No CGL Coverage for General Contractor for Subcontractor's Defective Work

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On November 8, 2024, the US Court of Appeals for the First Circuit (the Court) issued a decision in the matter of *Admiral Insurance Company, et al. v. Tocci Building Corporation, et al.*, No. 22-1462 (1st Cir. 2024). The appeal concerned a dispute between a general contractor (GC) and its insurers over coverage under a commercial general liability insurance policy (CGL). The question before the Court was whether the CGL covered damage to a non-defective part of the project (Project) resulting from a subcontractor's defective work on a different part of the Project. The answer to that question would determine whether the insurer had an obligation to defend and/or indemnify the GC in an underlying suit by the Project owner alleging issues with the GC's work.

In the underlying action, the insurer denied coverage on grounds that the action “does not include any allegations that [the GC] is liable for property damage caused by an occurrence, as those terms are defined in the policy.” In granting the insurers' motion for summary judgment, the district court reasoned that the allegation did not meet either requirement. The damage alleged was neither “property damage” because it was damage to the GC's project nor was the damage “caused by an occurrence” because faulty workmanship does not constitute an occurrence.

On appeal, the Court affirmed the insurers' denial of coverage, but for a different reason. The Court relied upon the “Your Work” property damage exclusion found in most CGL policies for GCs. Under this exclusion, there is no coverage for “property damage” to "[t]hat particular part of any property that must be restored, repaired or replaced because 'Your work' was incorrectly performed on it." The CGL policy defines "Your work" as work performed by or on behalf of the GC.

The GC argued the exclusion did not apply because it was not seeking coverage to repair and replace damage to Property directly caused by its subcontractor's defective work, but rather property damage to another part of the Project indirectly caused by the subcontractor's defective work. The Court did not agree. Applying Massachusetts state law, the Court found that the "particular part of any property" referenced in the “Your Work” exclusion refers to the entire Project because the GC was charged with managing the Project as a whole. The “Your Work” exclusion therefore applies, and the claim is not covered.

The Court opted to find there is no coverage under the “Your Work” exclusion rather than the “property damage”/ “occurrence” analysis as the Court recognized that there is a sharp split in authority as to whether damage to non-defective work resulting from a subcontractor's defective work constitutes “property damage” or is caused by an “occurrence.” The recent trend has courts interpreting “occurrence” to include unanticipated damage to non-defective property resulting from poor workmanship. The Court noted that the SJC has yet to rule on this issue and was reluctant to predict how they might. Therefore, the Court decided to “sidestep th[e] issue by focusing on the exclusions…” rather than speculating as to how the SJC may rule on this issue in the future.

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