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Alerts

Georgia Supreme Court Determines Subcontractor's "Faulty Workmanship" Constitutes Occurrence Under CGL Policy

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Insurance Coverage Alert

In *American Empire Surplus Lines Insurance Co. v. Hathaway Development Co., Inc.,* 2011 WL 7681117 (Ga. Mar. 7, 2011), the Georgia Supreme Court considered the question of whether there was insurance coverage for a plumbing subcontractor who had been sued by the general contractor on the subject project to recover the costs of repairs caused by the subcontractor's faulty workmanship. The Court stated, "[t]hese costs went beyond those required to fix [the subcontractor's] plumbing mistakes per se; rather they were costs associated with water and weather damage to surrounding properties."

The faulty workmanship included such errors as installing a four-inch pipe when the contract specified that a six-inch pipe be used. On another project, the insured had improperly installed a dishwasher supply line, and on a third job it had improperly installed a pipe in a manner that it separated under hydrostatic pressure.

Because the faulty workmanship led to damage to neighboring property, the Court held that an "occurrence" was alleged. The Court observed that its holding was in accord with what the Court called "the trend in a growing number of jurisdictions" where the term "accident" had been interpreted in the same manner. Citing the Texas Supreme Court's landmark decision on this subject, *Lamar Homes v. Mid-Continent Casualty Co.,*242 S.W.3d 1 (Tex. 2007), the Court stated:

[A] deliberate act, performed negligently, is an accident if the effect is not the intended or expected result; that is, the result would have been different if the deliberate act had been performed correctly.

Without discussing specifically what a plumber should foresee or expect when intentionally using a four-inch diameter pipe where a six-inch pipe was specified, the Court held that "an occurrence can arise where faulty workmanship causes unforeseen or unexpected damage to other property."

Practice Note
While the Georgia Supreme Court may have been overstating matters in suggesting that there is a growing trend favoring treatment of faulty workmanship as an "occurrence," this question is likely to be further developed and refined in the near future as courts around the country continue to struggle with the concept of "occurrence," particularly in the construction context. Coverage for faulty workmanship will likely continue to be analyzed under several overlapping analytical frameworks, including whether the resulting injury was the natural and foreseeable consequence of the insured's intentional actions, whether the claim against the insured involves only damage to the insured's work or product, and whether the claim brought against the insured is in contract or tort. Taking a coverage position, therefore, will require both a careful view of the divergent analyses prevalent in a particular state, as well as recognition that courts in other states may create an influential "trend."

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