



Alerts

Declaratory Judgment Entered Against Architect's Insurer finding that Design Flaws Were Unrelated and Subject to Separate Liability Limits

September 3, 2014

Professional Lines Alert

Dormitory Authority of the State of New York v. Continental Casualty Company, Docket Nos. 13-1671(L), 13-1700(XAP) United States Court of Appeals, Second Circuit (June 23, 2014)

The Dormitory Authority of the State of New York (DASNY) contracted with an architectural firm to design and oversee construction of new college buildings for the City University of New York. The project was beset by delays and the architect underestimated the steel requirements for the structural steel girts and exterior façade. DASNY sent a demand letter in May 2002 to the architect detailing the "steel girt tolerance issue."

After the project was finished in 2001, DASNY had also discovered that excessive accumulations of snow and ice were sliding off the building and commissioned a study on the "ice control issue" which concluded that the architect's design failed to take into account temperature variations for a building in NYC. The architect tried unsuccessfully to solve the issue by adding canopies to the buildings.

The surety on the performance bonds brought an action against DASNY and the architect for delay-related expenses and breach of professional duties. DASNY cross-claimed against the architect alleging breach of contract and negligence and identified the ice-control issue for the first time during discovery in that litigation in 2005. Continental Casualty had issued two claims-made policies to the architect provided that "all related claims shall be considered a single claim first made and reported ... within the policy year in which the earliest of the related claims was first made and reported". Related claims were defined as "all claims made against [the architects] and reported to [Continental] during any policy year arising out of ... a single wrongful act or related wrongful acts." The parties entered into an agreement to settle the steel girt tolerance issue for \$3.5 million under one policy in response to the 2002 demand letter. Continental took the position it would only pay an additional \$3 million under the second policy if DASNY obtained a declaratory judgment that the ice control issue did not arise out of the same or related wrongful acts identified in the 2002 demand letter. DASNY commenced a declaratory judgment action in 2013 and the U.S. District Court for the Southern District of New York granted a summary judgment holding that the ice control issue was not related to the steel girt tolerance issue. Continental appealed and the U.S.

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Court of Appeals for the Second Circuit affirmed that the two issues were not related claims.

Question Before the Court and How the Court Ruled

Whether the Two Issues were "Related Claims" as Defined in the Insurance Policies Arising out of a Single Wrongful Act or Related Wrongful Acts?

No. The Court of Appeals held that the steel girt tolerance issue and the ice control issue arose from two unrelated wrongful acts. One had to do with the structural integrity of the building and the other with its aesthetic design. The issues involved two different systems each with its own distinct engineering considerations. They involved different design teams and different sets of contractors worked on them. The problems manifested at different times, resulted in different types of damage, and the solutions to each issue were wholly different. The court rejected Continental's arguments that both issues resulted from the generalized negligence of the architect, finding that it was an insufficient degree of relatedness.

Court also held that the 2002 demand letter could not be fairly read to concern the ice control issue as Continental also contended. The demand letter focused entirely on the steel girt tolerance issue and identified no other failure of the design or execution. Although DASNY was aware of the ice control issue, it was not until after a study was conducted in 2003-04 that it became clear that a major design change would be needed to fix the ice control problem.

What the Court's Decision Means for Practitioners

This decision resulted from a very detailed analysis of the substance and timing of these two different design issues. The decision could have just as easily gone the other way based on the 2002 demand letter, which could have been construed as being broad enough to include the ice control issue, and was then in the process of being studied.

For more information, please contact your regular [Hinshaw attorney](#).

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