

Collapse Coverage, Additional Insured Status & Property Damage Exclusion Coverage Update

October 17, 2022

Collapse Coverage – Fourth Circuit (Maryland Law)

Blissful Enterprises, Inc. v. Cincinnati Ins. Co.

No. 19-2217, 2022 WL 6671618 (4th Cir. Oct. 11, 2022)

The U.S. Court of Appeals for the Fourth Circuit upheld the federal district court's decision granting summary judgment in favor of defendant Cincinnati Insurance Company (Cincinnati) and against Blissful Enterprises, Inc. (Blissful) in a case in which Blissful sought coverage for the cost of repairing a damaged underground pipe. The appellate court ruled that the "all risks" policy issued by Cincinnati excluded coverage for the damages.

Blissful owns and operates a hotel, which was insured under the Cincinnati policy. In January 2016, Blissful employees discovered a large hole in the ground next to the hotel building. It reported to Cincinnati that there was a sinkhole and that underground pipes forming part of the hotel's storm-water drainage system may have been damaged. After multiple engineers investigated the hole and both parties obtained experts to inspect the property, it was determined that the metal pipe had significantly corroded, causing the pipe to collapse. The collapsed pipe caused earth movement and the resulting sinkhole. After reviewing the policy provisions, Cincinnati denied the claim in its entirety.

Blissful filed a lawsuit against Cincinnati, and the district court granted summary judgment in favor of Cincinnati. The appellate court reviewed the terms of the Building and Personal Property Coverage form, which contained two relevant extensions: (1) an underground property extension, and (2) a collapse extension. Turning first to the underground property extension, the appellate court held that even though "Covered Property" included underground storm drains, there was no dispute that multiple exclusions, including a rust, corrosion, or decay exclusion, precluded coverage under that extension.

The crux of the issue turned on the collapse extension, which insured loss for "Covered Property," including collapse of any part of a building, if caused by decay hidden from view. The appellate court agreed with Cincinnati that the broader definition of "Covered Property" under the underground property extension did not equally apply to the collapse extension. Instead, the general definition of "Covered Property" used in the policy, which excluded underground storm drains, applied to the collapse extension. Therefore, the appellate court affirmed the district court's judgment in favor of Cincinnati.

By: Joshua LaBar

Additional Insured Status and Property Damage Exclusion – Eleventh Circuit (Florida Law)

The Cincinnati Specialty Underwriters Ins. Co. v. KNS Group, LLC

No. 21-13628, 2022 WL 5238711 (11th Cir. Oct. 6, 2022)

PPE Casino Resorts Maryland, LLC (PPE), the owner of Maryland Live! Casino and Hotel hired Tutor Perini Building Corporation (Tutor), a general contractor, to lead the construction of its new casino. Tutor hired GM&P Consulting and Glazing Contractors, Inc. (GM&P), a subcontractor, to perform exterior glazing of the building. GM&P then hired another subcontractor, KNS Group, LLC (KNS), to assist it. The parties signed a contract, where KNS agreed to “take out, maintain, and pay all premiums for’ commercial general liability and other types of insurance, and to indemnify GM&P for liability for damages ‘to person or property caused in whole or in part by any act, omission, or default by the subcontractor[.]”

PPE filed an action against Tutor, GM&P, and KNS in Maryland, alleging that GM&P installed a defective glass façade, which created the risk of property damage (the underlying action). GM&P filed a third-party complaint for breach of contract, negligence, indemnification, and contractual indemnification against KNS, due its alleged defective construction of the casino. Cincinnati Specialty Underwriters Insurance Company (Cincinnati), KNS’ insurer, then filed an action in the U.S. District Court for the Southern District of Florida, seeking a declaration that it had no duty to defend or indemnify KNS or GM&P in the underlying action because the Cincinnati policy “provides in part that no coverage is afforded to an additional insured [i.e., GM&P] where there is no coverage for the named insured [i.e., KNS] ...” Gemini Insurance Company (Gemini), GM&P’s insurer, intervened in the suit for GM&P and KNS. The parties filed cross-motions for summary judgment, and the district court held that Cincinnati had a duty to defend KNS in the underlying action, but it did not have a duty to defend or indemnify GM&P in the underlying action. GM&P appealed, and Cincinnati filed a cross-appeal.

On appeal, the U.S. Court of Appeals for the Eleventh Circuit held that Cincinnati’s additional insured endorsement does not provide coverage to GM&P because the underlying action alleges GM&P was negligent in its installation of the glass façade, and the policy only provides coverage for damages that KNS or its agents caused – neither of which include GM&P. Moreover, the appellate court affirmed that Cincinnati must defend KNS in the underlying action, reasoning that the property damage coverage exclusions “do not clearly apply” because the underlying action does not indicate whether KNS was involved in the faulty workmanship or the scope of KNS’ involvement in the property damage.

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As for the breach of contract claim, the appellate court noted that because the underlying action includes allegations that may fit within the policy's definition of property damage, and because that property damage may not be included in the policy's exclusions, Cincinnati had a duty to defend KNS in the underlying action. However, the appellate court decided that it was premature to decide whether Cincinnati has a duty to indemnify KNS.

By: Danielle Chidiac