PLUNKETT COONEY

Coverage for Faulty Workmanship Coverage Update

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Ohio Coverage Update
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Coverage for Faulty Workmanship – Ohio

Ohio N. Univ. v. Charles Constr. Servs., Inc.
--- N.E.3d ---, Slip Op. No. 2018-Ohio-4057 (Ohio Oct. 9, 2018)

The Ohio Supreme Court ruled yesterday that Cincinnati Insurance Company (CIC) had no duty to defend its general contractor insured, Charles Construction Services Inc. (Charles), finding that a subcontractor's faulty work on a hotel and conference center at Ohio Northern University (ONU) was not an "accident."

ONU contracted with Charles in 2008 to build The University Inn and Conference Center. Charles obtained a CGL policy from CIC that included a Products Completed Operations Hazard clause and terms specifically related to work performed by subcontractors. In September 2011, after work was completed, ONU discovered extensive water infiltration and other damage to the building and estimated repairs at $6 million. ONU sued Charles for breach of contract, and Charles lodged third-party complaints against several subcontractors. CIC agreed to defend Charles under a reservation of rights and later obtained a declaratory judgment, freeing it from any duty to defend Charles.

In its ruling, the trial court relied upon the Ohio Supreme Court's opinion in Westfield Ins. Co. v. Custom Agri Sys., Inc., 979 N.E.2d 269 (Ohio 2012), which found that property damage stemming from a policyholder's own defective work is not an accidental "occurrence," giving rise to an insurer's duty to defend. An appellate panel reversed, acknowledging that Custom Agri remained "good law" as applied to property damage claims resulting from the policyholder's own work, but reasoning that Custom Agri failed to address policy provisions dealing with subcontractors.

The Ohio Supreme Court reviewed the decision by the Ohio Court of Appeals to determine whether Custom Agri applies to claims regarding a subcontractor's faulty work. Despite a nationwide trend favoring coverage for such claims, the Supreme Court held that Custom Agri applies in equal force to damages tied to the work of a policyholder's subcontractors, so Charles was not covered for the ONU construction defect litigation: "We hold that property damage caused by a subcontractor's faulty work is not fortuitous and does not meet the definition of an 'occurrence' under a CGL policy."

The Supreme Court also noted that a ruling in favor of Charles would contravene the purpose of CGL coverage by effectively granting insurance coverage for a foreseeable risk: "As we explained in Custom Agri, CGL policies are not intended to protect owners from ordinary 'business risks' that are normal, frequent or predictable consequences of doing business that the insured can manage." The Ohio high court specifically rejected arguments by Charles, ONU and construction trade groups in favor of coverage for subcontractors' work based on recent holdings in various other jurisdictions, stating that "[r]egardless of any trend in the law, we must look to the plain and ordinary meaning of the language used in the CGL policy before us. ... When the language of a written contract is clear, we may look no further than the writing itself to find the intent of the parties."

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