PLUNKETT COONEY

Rain Exclusion Coverage Update

October 1, 2024

Rain Exclusion – Ninth Circuit (Washington Law)

Vandervert Const., Inc. v. Allied World Specialty Ins. Co.
No. 23-35248, 2024 WL 4234883 (9th Cir. Sept. 19, 2024)

The U.S. Court of Appeals for the Ninth Circuit affirmed the federal district court's grant of summary judgment in favor of Allied World Specialty Insurance Company and Westchester Fire Insurance Company, and against Vandervert Construction, Inc. (Vandervert). The issue in the case was whether a rain exclusion in Vandervert's all-risk insurance policy (policy) precluded coverage.

Vandervert suffered losses when heavy rain entered its construction project through a partially constructed roof. It sought coverage under the policy, which provided coverage for all risks except those expressly excluded. The policy excluded coverage for losses resulting from " '[r]ain ... entering the interior' of the property." The policy contained an exception to this exclusion that applied if the property was "constructed to a point that is fully weather resistant and all of the final components [including the roof and roof drainage systems] ... have been completely and permanently installed."

Vandervert argued that its losses resulted from "accumulated surface water" instead of rain, thereby, avoiding the exclusion altogether. The appellate court explained that coverage was precluded if rain fell straight through a roofless structure, or if it landed and accumulated on a partial roof before falling inside. The accumulation of rainwater in such a manner did not transform it into surface water that would avoid application of the rain exclusion. The appellate court held that an average purchaser of insurance would read the rain exclusion's completed-roof requirement to simply mean that the exclusion applies to damage from rain entering inside the property through an incomplete roof – which was the case for Vandervert's claim. Accordingly, the appellate court affirmed summary judgment in favor of the insurers.