Delaware State Court Holds that Defective Workmanship Claims do not Trigger Coverage by a Builder's Commercial General Liability Policy

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Guided by federal case law, on March 31, 2015 a Delaware state court held for the first time in *Westfield Ins. Co. v. Miranda & Hardt Contracting and Building Services LLC* that a builder's poor workmanship is not an occurrence for which the builder's insurance policy affords coverage. In the underlying case giving rise to the coverage dispute, a homeowner alleged that a builder deviated from approved building plans, used inadequate materials, improperly installed materials, violated building codes, and fraudulently represented that a home was properly constructed. The homeowner sued the builder under theories of negligence, negligence *per se*, and fraud. The insurer denied the builder's request for defense and indemnification for the homeowner's claims, citing in part that the allegations of defective workmanship did not qualify as an "occurrence" as defined by the builder's insurance policy.

The builder did not dispute that the underlying complaint alleged defective workmanship. However, the builder asserted that because it had not yet been proven that its work was defective, the insurer had prematurely denied coverage. The court properly rejected the builder's argument, and reiterated that under Delaware law the court must compare the *allegations* of the complaint to the insurance policy terms to make a coverage determination. Whether the complaint's allegations are ultimately meritorious is irrelevant to the initial coverage determination according to the court.

The relevant policy language defined "occurrence" as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." The court found instructive several Delaware federal court decisions holding that in the context of an insurance contract an "occurrence" is "an event happening without human agency, or, if happening through such agency, an event, which under circumstances, is unusual and not expected by the person to whom it happens." Since the builder controls the quality of its work, its defective workmanship does not fall within the accidental nature of events necessary to qualify as an occurrence. In this regard, the court reiterated that commercial general liability insurance policies are "not intended to serve as a performance bond or guaranty of goods or services."

The *Westfield* decision stands as a reminder that careful consideration must be given to the language utilized in an initial pleading as compared to the terms and conditions of the insurance policy to reach a prompt coverage determination. And, with the *Westfield* ruling, Delaware state and federal case law align to hold that defective workmanship is typically not an occurrence for which builders' commercial general liability insurance policies afford coverage.

White and Williams presented the prevailing argument in this matter. For further information or advice, please contact Marc Casarino (302.467.4520; casarinom@whiteandwilliams.com).