Eastern District of Pennsylvania Confirms Carrier Owes No Duty to Defend Against Claims for Faulty Workmanship

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On March 17, 2021, the Eastern District of Pennsylvania issued its decision in *Estate Chimney & Fireplace v. IFG Companies & Burlington Insurance Company*, 2021 U.S. Dist. LEXIS 50360 (E.D. Pa. March 17, 2021), finding that an insurance carrier had no duty to defend its insured where the allegations in the underlying litigation involved claims of faulty workmanship.

Estates Chimney & Fireplace, LLC (Estates Chimney) had performed inspections and replaced chase covers for a number of chimneys in a condominium complex. Chase covers are pieces of metal, which are placed over chimneys in order to keep out environmental elements. Several condominium owners sued Estates Chimney, alleging that Estates Chimney had improperly installed, then improperly replaced, their chimney caps, which caused their chimneys to cease working properly. As a result, the underlying plaintiffs allegedly incurred costs to repair or replace the chimney caps and chimneys.

Estates Chimney sought coverage from its carrier, who denied coverage based upon its determination that the claims in the underlying lawsuits arose out of faulty workmanship, which did not result in damage to the property of a third party. Estates Chimney filed a declaratory judgment action, seeking a declaration that it was entitled to coverage under the policy. Both parties moved for summary judgment, and the Eastern District ruled in favor of the carrier.

In reaching its decision, the court declined to consider the insured's expert's opinion, explaining that – under Pennsylvania law – courts "must decide coverage issues based on the four corners of the complaint against the insured, not the opinion of an expert, even if that expert opined that Estates Chimney did quality work that complied with all laws and regulations. This is a coverage dispute, the outcome of which cannot be decided by extrinsic evidence that addresses the merits of the underlying claims." *Id.* at *17.

Having determined that its consideration was limited solely to the four corners of the underlying complaints, the court concluded that all of the underlying plaintiffs' claims were for faulty workmanship, which do not present the degree of fortuity required for there to be a covered "occurrence," defined in part as an "accident." *Id.* at *17 (citing *Kvaerner Metals Division of Kvaerner U.S., Inc. v. Commercial Union Insurance Co.*, 908 A.2d 888 (Pa. 2006).

The court further rejected the insured's argument that – because some of the underlying plaintiffs may have sought consequential damages – the allegations in the underlying complaint constituted an "occurrence." *Id.* Rather, the court explained that "the holding in *Kvaerner* has been extended to the foreseeable results of the insured's faulty workmanship." *Id.* Thus, because it was foreseeable that faulty workmanship when capping chimneys could lead to damage to the chimney itself, rendering the fireplace unusable, "there is no insurance coverage." *Id.* at *16.

Finally, the court declined to find a covered "occurrence" based upon the insured's argument that the underlying lawsuits involve "specific allegations of negligence." Relying upon well-established Pennsylvania law, the Eastern District explained that it is the factual allegations, not the legal terminology used in the complaint, which determines whether a duty to defend arises. *Id.* at *18 (citing *Nationwide Mutual Insurance Company v. CPB International, Inc.*, 562 F.3d 591, 598-99 (3d Cir. 2009)). Thus, faulty workmanship – even when cast as a negligence claim – does not constitute a fortuitous event. *Id.* (citing *Westfield Insurance Company v. Bellevue Holding Company*, 856 F. Supp. 2d 683, 694 (E.D. Pa. 2012).

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