

New York Court Confirms No Coverage for Resulting Water Damage to General Contractor's Work Product

By: Anthony L. Miscioscia and David E. Edwards

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A homeowner's insurer sought to recover amounts the homeowner insurer paid with respect to construction and renovation work performed on a home (two combined residential co-op units) from the CGL carrier of a general contractor. The homeowner's insurer had obtained a subrogation judgment against the contractor and now sought to collect from the contractor's CGL carrier.

The contractor had performed renovation work in March 2013 at the home, including new floors. In November 2013, the contractor returned to perform warranty repairs in response to the homeowner's complaints. Later, in January 2014, a HVAC pipe broke causing water damage in the home, including to the floors.

The homeowner's insurer paid that loss, and asserted that the repair work created the conditions resulting in the water leak. While the homeowner insurer did not seek payment for the costs and expenses to repair or replace defectively installed flooring, it did seek to recover "consequential damages" to the floors, which did not occur until after the project was complete, and were caused by the unexpected 2014 pipe burst and flooding. The homeowner insurer argued that: (1) if a CGL policy contains a Subcontractor Exception, it covers an insured contractor's faulty workmanship that causes damage to work performed by a subcontractor; and (2) a claim against an insured contractor for unexpected and unintended damages to a third-party's property, flowing from faulty workmanship, as distinguished from a claim for the repair or replacement of defectively performed work, is also covered.

On May 7, 2020, The New York Supreme Court rejected those arguments. Granting summary judgment in favor of the CGL insurer, the court noted that "New York Courts have held that CGL policies are not intended to cover a customer's claims for a contractor's defective work that results in damages to the contractor's work product." The court also emphasized that "CGL policies do not cover as occurrences defective workmanship claims unless the defective workmanship causes damage to property that is outside of the scope of the insured's construction project."

Because the factual basis for the homeowner's insurer's claim was the contractor's defective work (on a warranty repair), the court held there was no coverage under the contractor's CGL policy for such damages. *RD Rice Construction Inc. v. RLI Insurance Company*, Index # 651185/2015, 2020 NY Misc. LEXIS 1991 (N.Y. Cty. May 7, 2020).

If you have any questions or need additional information, contact Anthony L. Miscioscia (misciosciaa@whiteandwilliams.com; 215.864.7166), David E. Edwards (edwardsd@whiteandwilliams.com; 215.864.6317) or a member of the Insurance Coverage and Bad Faith Group.

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