BARNES & THORNBURG LLP

NEWS ALERT: Alabama Supreme Court Withdraws And Re-Issues Decision To Find “Occurrence” For Construction Defect Claim

April 29, 2014 | | Construction Defect,Occurrence,Policyholder Protection

Clifford J. Shapiro
Of Counsel
(Retired)

Last September, the Alabama Supreme Court issued a decision that denied insurance coverage to a homebuilder on the ground that there can be no “occurrence” where construction defect claims do not allege property damage to something other than the home the policyholder built. *Owners Insurance Co. v. Jim Carr Homebuilder LLC*, 2013 Ala. LEXIS 122, 2013 WL 5298575 (Ala. Sept. 20, 2013). In that decision, the court did not analyze the policy language to distinguish between damage to the insured's project (which it held did not constitute an “occurrence”) and damage to other property or other parts of the structure (which it held could constitute an “occurrence”).

On March 28, 2014, the Alabama Supreme Court withdrew its earlier decision and issued a new decision that clarifies and expands the scope of insurance coverage for Alabama policyholders involved with construction defect claims. The new decision expressly rejects the view that defect claims which allege damage only to part(s) of the insured's scope of work are not an "occurrence." The decision clarifies that while faulty workmanship itself is not “property damage” caused by an “occurrence,” this does not mean that, in an appropriate case, additional damage to a contractor’s own scope of work resulting from faulty workmanship is not properly considered “property damage” caused by an “occurrence.” In this manner, the Alabama Supreme Court joined the reasoning of recent decisions from several other jurisdictions that recognize that the “occurrence” analysis should not be based on the kind of property damage that is alleged in the underlying construction defect case. See, e.g., *K & L Homes, Inc. v. American Family Mutual Insurance Company*, 213 N.D. 57 (N.D. 2013); *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So. 2d 871 (Fla. 2007); *Travelers Indem. Co. of Am. v. Moore & Assocs.*, Inc., 216 S.W.3d 302 (Tenn. 2007); *Lennar Corp. v. Auto-Owners Ins. Co.*, 151 P.3d 538 (Ariz. Ct. App. 2007).

The decision also holds that the your work exclusion does not apply at all if the policyholder purchases "completed operations" coverage. According to the court, the "your work exclusion applies if and only if the policy's declarations fail to show any coverage for 'products-completed operations.'" This part of the decision was critical to the outcome of the case because the insurance policy at issue did *not* include the standard "subcontractor exception" to the your work exclusion. This is a significant holding for construction industry policyholders. The bottom line: The court required the insurance carrier to pay the entire $600,000 arbitration award that had been

RELATED PRACTICE AREAS

Commercial General Liability
Construction
Copyright, Trademark, and Media Liability
Credit and Mortgage Insurance
Directors and Officers Liability
Employment Practices Liability
Fidelity Bonds and Commercial Crime Policies
First-Party Property
Insurance Recovery and Counseling
Ocean Marine and Cargo Coverage
Professional Liability
Representations and Warranties
Workers’ Compensation and Employers’ Liability

RELATED TOPICS

Construction Defect
Occurrence
Property Damage

issued against the insured homebuilder.