Recent Developments in Construction Law

The following are some recent cases of interest related to construction law and dispute resolution. If you have a case you would like to submit, please contact a member of the newsletter editorial board.

No Need of Injury to Others' Property to be an "Occurrence" under a CGL Insurance Policy

In a July 12, 2013, opinion that could have far-reaching ramifications in the construction industry in the insurance coverage context, the Supreme Court of Georgia ruled that an "occurrence" under a standard Commercial General Liability (CGL) policy may be based on a breach-of-warranty claim and does not require damage to work or property of someone other than the insured. This holding removes one commonly used rationale for insurers to deny coverage in the construction context based on lack of an "occurrence," although insurers may still be able to deny coverage for other reasons. The case is styled *Taylor Morrison Services, Inc. v. HDI-Gerling American Insurance Company*.

In the underlying case, a homebuilder was sued by homeowners alleging faulty construction and fraud in concealing the defects. The builder's insurer filed a separate lawsuit against the builder to establish that the homeowners' claims were not covered by the CGL policy. The CGL policy covered "occurrences" but contained several exclusions, including the "builder's risk" exclusion and other business risk exclusions.

The federal trial court applied Georgia law and ruled in the insurer's favor. It found there was no coverage because the claims against the builder did not involve an "occurrence" because the only property damage was to the work of the insured builder. The builder appealed, and the U.S. Court of Appeals for the Eleventh Circuit certified the pertinent legal questions to the Supreme Court of Georgia.

The Supreme Court rejected the federal trial court's rationale. It held "that an 'occurrence,' as the term is used in a standard CGL policy, does not require damage to the property or work of someone other than the insured." The Supreme Court then held that a claim for breach of warranty alone may constitute an "occurrence" that triggers coverage under a CGL policy, but that "in most cases" a claim must allege something other than fraud to be an "occurrence."

This holding removes one commonly used rationale for insurers to deny coverage in the construction context—the lack of an "occurrence." It could be relied upon by contractors that are denied coverage on a CGL policy based on this rationale. It is important to note, however, that not every "occurrence" gives rise to coverage under a CGL policy. Moreover, an insurer may still be able to avoid coverage of an "occurrence" if it does not cause damage to property of a third party pursuant to the "builder's risk" or other exclusions in a CGL policy.

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