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C A S E A L E R T

New Jersey Supreme Court Defines the Parameters of the "Your Work" Exclusion

On August 4th the Supreme Court of New Jersey rendered an important decision in Cypress Point Condominium Association, Inc. v. Adria Towers LLC, et al., holding that a Comprehensive General Liability (CGL) policy covers a developer for property damage caused by a subcontractor.

In 1979 the Court ruled in Weedo v. Stone-E-Brick that the ISO 1973 "your work" exclusion – which precluded coverage for "property damage to your work arising out of it or any part of it" – would not cover the cost of repairing or replacing any allegedly defective work of the insured. In the wake of Weedo, coverage litigation arising out of construction defect claims would typically focus on the scope of the insured's work and whether the areas of damage exceeded that scope. In the case of a property developer or general contractor, because that insured's work will often encompass the entire project, a claim of damage to such work – even if caused by a third party such as a subcontractor – nevertheless would fall within the scope of the GC's work and would not trigger coverage for the GC under the 1973 version of the exclusion.

ISO added an exception to the "your work" exclusion in 1986, however, expressly noting that it "does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor." This exception created confusion which a majority of courts across the country resolved in favor of coverage, holding that defective work by a subcontractor is an accident from the perspective of the GC.

The New Jersey Supreme Court agreed in Cypress Point, holding that property damage caused by a subcontractor's faulty workmanship constitutes an occurrence should not be considered the work product of the general contractor.

In a lengthy discussion likely to be revisited in numerous future coverage disputes, the Court defined an "accident" as "unintended and unexpected harm caused by negligent conduct" and an "occurrence" as "consequential harm caused by the negligent work." In this case the negligent work was that of a subcontractor and the consequential harm was water damage to the completed and non-defective portions of the building. The subcontractor exception within the "your work" exclusion rendered it inapplicable and entitled the property developer to liability coverage.

While the Cypress Point opinion understandably focuses on the indemnity obligations of the GC's liability insurers – that was, after all, the only issue on appeal – the industry should remain mindful of the continued vitality of the "your work" exclusion as applied to subcontractors themselves, who would be entitled to coverage only to the

extent that their alleged negligence causes damage to property beyond the limited scope of their own work. Cypress Point does not abrogate the principle announced in Weedo that the contractual responsibility to repair or replace one's own defective work is a business risk which may not be shifted to a liability insurer.

A copy of the complete decision may be found here. As always, feel free to contact Marc Dembling or Gina Stanziale of our Coverage Team with any questions about this important decision and its potential applicability to your claims.