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## New Jersey Supreme Court Rules That Consequential Damages Claims Against General Contractor Caused By Subcontractor's Faulty Workmanship Are Covered Under General Contractor's CGL Policy.

On August 4, 2016, the New Jersey Supreme Court issued its opinion in Cypress Point Condominium Association, Inc. v. Adria Towers, L.L.C., holding that claims against a general contractor for consequential damages caused by a subcontractor's faulty workmanship are covered by the general contractor's standard commercial general liability ("CGL") policy. This case expands coverage available to policyholders in construction-defect actions.

The case arose out of claims that faulty workmanship during the construction of a condominium complex led to water infiltration that damaged the common areas and individual units. The Law Division ruled that the faulty workmanship did not constitute "property damage" caused by an "occurrence" because the damages "arose entirely from faulty work performed by or on behalf of the developer." In so ruling, the Law Division relied in part on Weedo v. Stone-E-Brock, Inc., 81 N.J. 233 (1979), and Fireman's Insurance Co. of Newark v. National Union Fire Insurance Co., 387 N.J. Super. 434 (App. Div. 2006).

The Appellate Division reversed, ruling that "unintended and unexpected consequential damages [to the common areas and residential units] caused by the subcontractors' defective work" satisfied the policy's definitions of "property damage" and "occurrence." The Appellate Division also ruled that the "subcontractor" exception contained in the "your work" exclusion created a reasonable expectation that property damage caused by a subcontractor's faulty workmanship fell within the scope of "property damage" and "occurrence" in the CGL policy.

The Supreme Court affirmed. First, the Court ruled that the consequential damage meet the policy's definition of "property damage" under the CGL policy. Second, the Court found that "the consequential water damage to the completed and nondefective portions" of the condominium complex caused by the defective workmanship was an "accident" as that term, which is not defined in a CGL policy, is generally understood. Therefore, the property damage constituted an "occurrence" under the CGL policy. The Court distinguished Weedo, 81 N.J. 233 (1979), and Fireman's Insurance Co., 387 N.J. Super. 434, because those cases interpreted an earlier Insurance Services Office, Inc. CGL policy form.

Third, the Court ruled that the "your work" exclusion was unambiguous and would, but for the "subcontractor" exception, bar coverage for the loss. However, the "subcontractor" exception rendered the exclusion inapplicable. The Court therefore did not address the Appellate Division's ruling that the "subcontractor" exception to the exclusion created a reasonable expectation that the consequential damage caused by a subcontractor's faulty workmanship constituted "property damage" and an "occurrence" as those terms are used in a CGL Policy. The Court also stated that insurers could eliminate the "subcontractor" exception to the "your work" exclusion or add a breach-of-contract exclusion if they wish to exclude coverage for faulty workmanship performed by a subcontractor.

If you have any questions about Cypress Point Condominium Association, Inc. or questions about insurance coverage issues in general, please call Kevin Wolff or Tim Smith.

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