Cypress Point Condominium Association v. Evanston Insurance Co. et al

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Court: New Jersey Supreme Court
Case Number: A-13/14/15 (076348)

The vast majority of states that have addressed the issue of what is an "occurrence" under a commercial general liability policy have reached the conclusion that construction defect claims are within coverage. Since an "occurrence" is defined as an "accident" courts in many states, including New Jersey, look to whether the conduct causing the injury or damage was intentional or accidental. The coverage inquiry should end there. UP also reminded the court that cases analyzing exclusions to coverage are inapposite because, as a matter of law, exclusions are to be construed narrowly while coverage grants are to be construed broadly. Here, the "occurrence" language grants coverage, thus the coverage inquiry must be based on a broad interpretation of the policy language that favors coverage. In a construction defect case, as here, where there is no evidence that a contractor or subcontractor intended or expected to cause injury, an "occurrence" (read: accident) based policy must provide coverage. Finally, UP stressed that the primary purpose of insurance is to "insure" and to indemnify. Where more than one reasonable interpretation of a policy exists, the interpretation urged by the policyholder and in favor of coverage must prevail. UPdate 8/4/16: From Law 360 – The New Jersey Supreme Court held [today] that damages resulting from a subcontractor's defective work on a condominium complex triggered an insurer's duty to defend the general contractor, joining the majority of state high courts to have ruled on the issue. In a unanimous decision, the New Jersey justices upheld a state appeals court's July 2015 ruling that consequential damages to the common areas of a condo complex and unit owners' property caused by subcontractors' defective work are "property damage" and an accidental "occurrence" under the general contractor's commercial general liability policies. "We affirm the judgment of the Appellate Division and hold that the consequential damages caused by the subcontractors' faulty workmanship constitute 'property damage,' and the event resulting in that damage — water from rain flowing into the interior of the property due to the subcontractors' faulty workmanship — is an 'occurrence' under the plain

language of the CGL policies at issue here," New Jersey Justice Lee Solomon wrote for the court.

UP's brief was authored pro bono by Timothy P. Law, Esq., Jay M. Levin, Esq., and Jill M. Priscott, Esq. of Reed Smith LLP