

May 26, 2011

S.C. Supreme Court Reviews *Crossman* Decision

Earlier this week, the South Carolina Supreme Court heard oral arguments in the rehearing of its January 7, 2011 decision in *Crossman Communities of North Carolina, Inc. v. Harleysville Mutual Insurance Co.* The *Crossman Communities* decision significantly altered South Carolina law on Commercial General Liability (CGL) policies. In *Crossman*, the Court held that when property damage is a natural consequence of faulty work, there is no “occurrence” – and thus an insurance company has no duty to defend its insured in a lawsuit and no duty to pay if its insured loses that suit. The implications for risk allocation in the construction industry are enormous.

The legislature responded before the Court even heard oral arguments, however. Last week, South Carolina Governor Nikki Haley signed into law an Act (S.431) regulating what constitutes an “occurrence” under a commercial general liability (CGL) policy. In direct opposition to the *Crossman* decision, the law requires that CGL policies covering risk in South Carolina are “deemed to contain” a definition of occurrence that includes “property damage or bodily injury resulting from faulty workmanship, exclusive of the faulty workmanship itself.”

Under the new law, a policy holder is entitled to a defense and indemnity from his insurer for damages flowing from his own faulty workmanship, assuming no other policy provisions foreclose coverage. What’s more, the new law is retroactive to cover all disputes pending as of the date of signing—not merely policies written after the bill became law.

Because of S. 431, the *Crossman* rehearing decision (which likely will be published soon) may have very little practical effect. The new law, with its retroactive nature, requires the Court to find that the insured had coverage in *Crossman*. But critics of S. 431 claim the law is unconstitutional because of its retroactive nature, and Harleysville Mutual Insurance Co. filed a challenge to the law's constitutionality on Monday.

[Click here to read the full text of S. 431.](#)

[Click here to read the South Carolina Supreme Court's January ruling.](#)

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If you have any questions regarding the issues raised in this alert, please contact either the Womble Carlyle attorney with whom you usually work or one of the following attorneys:

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