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South Carolina Attempts to Clean Up the 'Intellectual Mess' Over the Meaning of 'Occurrence' in Construction Defect Claims

Insurance Law Update

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Supreme Court of South Carolina

In *Crossmann Communities of North Carolina, Inc. v. Harleysville Mut. Ins. Co.*, ___ S.E. 2d ___, 2011 WL 93716 (S.C. January 7, 2011), the Supreme Court of South Carolina held that there is no coverage under a commercial general liability (CGL) policy for liability that arises from nothing more than the natural and probable consequences of defective construction.

Harleysville Mutual Insurance Company issued a CGL policy to the developers of waterfront condominiums. After the condos were built and sold, the purchasers sued the insured developers, alleging that defective construction of the condos' siding installed by subcontractors had resulted in significant water intrusion, causing substantial decay and deterioration. After settling the purchasers' claims for $16.8 million, the insureds filed a declaratory judgment action to determine if coverage existed under the Harleysville policy. The parties stipulated to the facts, and the trial court ruled that the CGL policy provided coverage under the "subcontractor exception" to the "your work" exclusion.

The South Carolina Supreme Court reversed. The court noted that different approaches to the "subcontractor exception" and to the "your work" exclusion had resulted in an "intellectual mess." The court suggested that much confusion in defective construction cases could be avoided if courts took care to first address whether an "occurrence," i.e., a fortuitous accident, had taken place.

To resolve the developers' claim for coverage, the court framed the issue as whether consequential damages to non-defective components of an insured's project, caused by faulty workmanship, would necessarily constitute an occurrence. Although it noted that faulty workmanship might result in an occurrence to non-defective components of an insured's project, the South Carolina Supreme Court held that that would require a fortuity separate from the defective work itself. Under the

circumstances of this case, however, the court found that water intrusion into the condos was not fortuitous. Rather, the water intrusion was merely a "natural and expected consequence of negligently installing siding." Because the developers' liability to the condo purchasers was based on nothing more than the natural and probable consequences of faulty workmanship, the developers had failed to prove that their claim stemmed from an occurrence, and coverage under the Harleysville policy was precluded.

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