



The Alabama Supreme Court Broadens the Definition of “Occurrence” in a General Contractor’s Commercial General Liability Policy in *Owners Insurance Company v. Jim Carr Homebuilder, LLC*

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On March 28, 2014, the Alabama Supreme Court withdrew its September 20, 2013 opinion and substituted a new decision in *Owners Ins. Co. v. Jim Carr Homebuilder, LLC*, 2014 WL 1270629 (Ala. Mar. 28, 2013). In its new decision, the Alabama Supreme Court held that the definition of “occurrence” in a general contractor’s general commercial liability policy (“GCL”) covered damage to the structure due to exposure caused by of faulty workmanship. *Jim Carr*, 2014 WL 1270629 at *5. Moreover, the court narrowly defined the “your loss” exclusion as precluding the recovery of costs to repair damage caused by faulty workmanship only where the policy declarations did not include coverage for “products-completed operations hazard.”¹

Background and Procedural Posture

This case stems from Jim Carr Homebuilder, LLC’s (“JCH”) construction of a new home on Lay Lake in Wilsonville, Alabama in January 2006. Construction of the nearly \$1.2 million structure was completed in early 2007 (the “Project”). However, almost immediately, the home began experiencing significant damage from water intrusion. JCH undertook efforts to remediate and fix the water damage, but from all accounts these efforts were unsuccessful. After remediation attempts failed, the homeowners sued JCH for breach of contract, fraud, and negligence/wantonness on May 13, 2008 (“Primary Action”).

After the homeowners filed suit, JCH invoked coverage under the GCL policy it maintained for this Project with Owners Insurance Company (“Owners”). Thereafter, Owners issued a reservation of rights and unsuccessfully attempted to intervene in the Primary Action to determine coverage. Owners then filed a separate declaratory judgment lawsuit (“Dec Action”) against JCH and the homeowners concerning the issue of coverage. Specifically, Owners requested that the trial court rule that the water damage resulting from the faulty construction was not an “occurrence” within the meaning of the GCL policy and that the “your work” exclusion also applied to damage resulting from JCH’s faulty workmanship. The applicable GCL policy in this case defined “occurrence” as “an

¹ However, in the current case, the Court did not reduce the coverage because the court did not specifically apportion any amount to the repair of the faulty condition that the resulting damage did not already subsume.

accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

The parties then proceeded to arbitration in the Primary Action. At arbitration, the arbitrator found in favor of the homeowners in the amount of \$600,000 based upon improper installation of the flashing and brick/mortar by JCH and its subcontractors. The arbitrator concluded that JCH’s faulty workmanship resulted in numerous leaks throughout the property, which caused damage to the structure.

Following the arbitration decision, the homeowners and JCH each filed a motion for summary judgment in the Dec Action requesting that the trial court find that Owners was responsible for paying the arbitration decision under the GCL policy. On May 25, 2012, the trial court granted summary judgment in favor of the homeowners and JCH and against Owners. The trial court concluded that the homeowners were entitled to \$600,000 plus post-judgment interest from Owners. Owners then appealed the trial court’s decision to the Alabama Supreme Court.

Summary of the Law and Holding

The main legal issue on appeal before the Alabama Supreme Court was whether the trial court erred in holding that the “occurrence” provision in JCH’s GCL policy included coverage for losses sustained by the actual structure as a result of faulty workmanship. Specifically, the issue was whether JCH’s poor craftsmanship, which caused the structure to be exposed to harmful conditions over a long period of time and caused damage to the structure, was an “occurrence” as to the structural damage or just damage to personal property.

In addressing this issue, the Alabama Supreme Court first reviewed the legal precedent for defining “occurrence.” The Court noted that whether poor workmanship invokes coverage as an “occurrence” depends on the “nature of the damage that results from the faulty workmanship.” *Town & Country Prop., LLC v. Amerisure Ins. Co.*, 111 So.3d 699, 705 (Ala. 2011). However, faulty workmanship by itself does not fall within the definition of “occurrence.” *Id.* Thus, the Court noted that the cost of repairing or replacing faulty workmanship, where no otherwise damage has occurred, is not recoverable under the GCL policy. *Shane Traylor Cabinetmaker, LLC v. American Express Res. Ins. Co.*, 126 So.3d 163, 172 (Ala. 2013).

Within the context of the dispute and provision before it in *Jim Carr*, the Court noted that poor workmanship can lead to the creation of an occurrence. *Moss v. Champion Ins. Co.*, 442 So. 2d 26, 29 (Ala. 1983). The Court found that an occurrence **could include damage not only to personal property but also damage to the structure itself as a result of continued exposure to a harmful condition.** The court concluded that JCH’s faulty workmanship exposed the structure to harmful conditions that ultimately resulted in the \$600,000 loss. Thus, the Court held that the water damage to the property was properly included within the definition of “occurrence” in the GCL policy.

Owners also argued a secondary issue on appeal – whether the “your work” exclusion barred coverage notwithstanding the loss resulted from an occurrence. On this issue, the Court noted that the “your work” exclusion in the applicable policy contained two requirements: (1) that the loss resulted from the contactor’s work and (2) that the loss was included in the “products-completed operations hazard.” The Court further noted that the “your work” exclusion applies **if and only if** “the Policy’s declarations fail to show any coverage for ‘products-completed operations.’” *Jim Carr*, 2014 WL 1270629, at *7. Here, the Court reviewed the policy declarations and found that products-completed operations coverage was included in the GCL policy. Thus, the Court held that the “your work” exclusion did not apply to the current loss and that coverage for the loss was appropriate. As such, the Court **affirmed** the trial court’s granting of summary judgment in favor of the homeowners and JCH.

Conclusion

In the present case, the Alabama Supreme Court broadened GCL coverage for general contractors when it included structural damage due to exposure caused by faulty workmanship within the definition of “occurrence.” Further, the Alabama Supreme Court placed the onus on the insurer to expand the applicability of the “your work” exclusion by withholding coverage for the “products-completed operations hazard.” While this decision presents a favorable result for general contractors in obtaining increased coverage, it also provides insurers with a roadmap for excluding coverage in the future. Specifically, this decision signals to any insurer that removal of coverage for “products-completed operations hazard” will allow the insurer to exclude faulty workmanship losses under the “your work” exclusion. For general contractors, this decision highlights the importance of obtaining coverage for products-completed operations hazard, as it can be the key provision for determining the applicability of the “your work” exclusion.

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