No Coverage for Fired Contractor

Insurance Law Update

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California Court of Appeal

In *Clarendon American Ins. Co. v. General Security Indem. Co.,* 2011 WL 1143453 (Cal. App. March 30, 2011), the California Court of Appeal held that an insured's unilateral termination from a construction contract before its work was complete did not satisfy a products-completed operations hazard coverage provision requiring an insured's work be completed or abandoned.

Clarendon American sued General Security for declaratory relief and contribution after settling an action against Hilmor Development, an insured of both insurers. Clarendon contended that the underlying action against Hilmor triggered the General Security policy's "products-completed operations hazard" coverage. The trial court, however, granted summary judgment for General Security, and the Court of Appeal affirmed.

The products-completed operations hazard provision at issue provided coverage for "bodily injury" or "property damage" arising out of Hilmor's work or product, with the exception of "[w]ork that has not yet been completed or abandoned." According to the Court of Appeal, Hilmor had not completed its construction project, as defined in the contract, and the contract had not been abandoned, either expressly (i.e., by mutual release of contractual duties) or impliedly (i.e., by an aggregation of numerous contractual changes). Instead, Hilmor was unilaterally terminated from the job before it completed its work. The other party reserved its rights under the contract, specifically noting that Hilmor's work on the project was not complete, and hired a new contractor to complete the job.

In addition, the court held that the faulty workmanship provisions found in paragraphs j(5) and j(6) excluded coverage for poor workmanship and materials, which formed the basis for the action against Hilmor. The "claims in progress" exclusion also precluded coverage for continuing and progressive property damage beginning prior to the inception of the General Security policy.

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