Water Leaks Are an Ongoing Battleground for Insurance Coverage and Creative Policy Interpretations

Insurance companies work to protect their policyholders from risk. But the protection ends at the four-corners of the policy document itself: insurance, after all, is a contract based risk-sharing business, not a lottery. As a result, when policy language does not line up with a submitted claim, an insurer will fight to avoid payment. Two recent disputes showcase the creativity that policyholders and companies will apply in the battle over coverage.

Water intrusion is a common occurrence and a familiar battleground for policyholders and insurers. In *Robinson Eye Center LLC v. State Farm Fire & Cas. Co.,* 2013 WL 1776654 (W.D. Pa. 2013), a policyholder made the first of several claims under a property and liability policy covering its leased office. The first claim arose out of damage from falling ceiling tiles due to water intrusion from rain. Water intrusion continued despite a replacement roof installed by the landlord, with damages leading the policyholder to make four more claims for separate events of damage due to water. The insurer refused to pay any of the claims, choosing instead to terminate coverage.

The insurer then moved to dismiss a lawsuit filed by the policyholder for coverage under the policy. The insurer alleged that the lawsuit was not timely filed because the water intrusion began several months before the first damage was reported. Essentially, the insurer argued that all of the claims began with the very first leak such that the lawsuit had to be filed within two years of that first leak. The Court, however, disagreed that the first drip was the insurable event. Rather, the Court explained, the "physical loss" that triggered the two year period was the first known damage to the property.

Insurers are not alone in stretching the boundaries of policy language. Policyholders also are known to file claims despite what many could consider to be clear barriers to coverage. In California, for instance, a claimant did not let an endorsement excluding residential properties stand in the way of making a claim for damages to an multi-unit apartment building. In *Atain Specialty Ins. Co. v. North Bay Waterproofing, Inc.* , 2013 WL 1819609 (N.D. Cal. 2013), a waterproofing contractor's commercial general liability policy carried a "Total Residential Exclusion" endorsement that excluded coverage for "any condominium, townhome, single family dwelling, and other residential or tract housing project." The contractor was sued for defective work and water intrusion damages to "ten 3-story apartment buildings containing 124 residential dwelling units."

The contractor did not let the Total Residential Exclusion stop it from submitting the lawsuit to its insurer for defense and indemnity. Rather, the contractor argued that "residential" as used in the policy should be interpreted to mean "shelter in exchange for monetary consideration without transfer of title" and that the project was "commercial" because the developer and contractors hoped to profit from the endeavor. The court rejected the contractor's strained definition of "residential" in favor or the ordinary, layperson definition found in Merriam-Webster's Online Dictionary. The Court also found that reclassifying the property as commercial would render the endorsement totally meaningless because every dwelling at one time was a commercial project for a contractor.

In today's business climate, even common, relatively small claims for water intrusion can lead to courtroom battles. The only way for a business to know that coverage is in place when you need it is to have an insurance program that conforms to your business pursuits and protects against the risks likely to be encountered.

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As often is said, the "devil is in the details" and insurance policies are no exception. Coverage that is given on one page may be carved out through exclusions and exemptions on another page of the policy. Insureds need to review their coverage regularly to make sure that the coverage in place matches the risks they need to minimize.

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