

New Jersey Supreme Court Finds Coverage Under a Developer's Commercial General Liability Policy for a Subcontractor's Faulty Workmanship

Saturday, August 6, 2016

On August 4, 2016, the New Jersey Supreme Court issued a unanimous decision in a case regarding insurance coverage that could have lasting impact on developers, contractors, and subcontractors. In *Cyprus Point Condo. Ass'n, Inc. v. Towers*, 2016 N.J. LEXIS 847 (Aug. 4, 2016), the Supreme Court ruled that under a property developer's commercial general liability ("CGL") insurance policy, a subcontractor's faulty workmanship constituted "property damage" and the event resulting from that damage — water from rain flowing into the interior of the property — was an "occurrence" under the policy so the loss was covered.

The *Cyprus Point* decision is practically and legally significant for all those who are involved in construction litigation and related insurance coverage cases.

The *Cyprus Point* case arose when a condominium association sued the developer for damages to a luxury commercial condominium complex. Following completion of the project by the developer and transition of control of the project to the condominium association, several condominium owners began experiencing roof leaks and water infiltration. The association brought an action against the developer and several of the developer's subcontractors alleging that the water issues were caused by faulty workmanship during construction, which resulted in consequential damages to the association. The developer then requested that its insurer defend and indemnify it against the association's claims. The insurer refused, and the association filed an amended complaint seeking a determination whether its claims against the developer were covered under the developer's CGL policies. The insurer amended its answer and denied any obligation to defend and indemnify the developer because the faulty workmanship was performed by subcontractors. Motions for summary judgment were then filed by the insurers, who argued, among other things, that they were not liable for the subcontractor's faulty workmanship because it did not constitute an "occurrence" that caused "property damage" as defined by the CGL policies.

The trial court concluded that the faulty workmanship did not constitute an "occurrence" and that the consequential damages caused therefrom were not "property damage" under the terms of the policy because the damages arose entirely from faulty work performed on behalf of the developer. Accordingly, the trial court granted summary judgment for the insurers. The Appellate Division reversed the trial court concluding that, based on the plain language of the CGL policies, the damage alleged in the association's claims satisfied the CGL policies' definitions of "property damage" and "occurrence." The insurers subsequently appealed to the New Jersey Supreme Court.

Notably, the CGL policies at issue in *Cyprus Point* were modeled after the standard form CGL policies promulgated by the Insurance Service Office Inc. ("ISO"), which are commonly utilized throughout insurance industry for construction projects. The policies covered "property damage" resulting from an "occurrence" as those terms are defined in the CGL policies, but the policies also contained a relevant exclusion, which excluded coverage for property damage due to the contractor's own work. However, this exclusion did not apply "if the damaged work or the work out of which the damage arises was performed on the insured's behalf by a subcontractor." In other words, there may be coverage under the policy if a subcontractor performed the work



Article By

[Timothy J. DeHaut](#)
[Giordano, Halleran & Ciesla, P.C.](#)
[The Litigation Landscape Blog](#)
[Construction Law](#)
[Insurance Reinsurance & Surety](#)
[Litigation / Trial Practice](#)
[New Jersey](#)

on behalf of the contractor, and this work resulted in the property damage.

The principle argument advanced by the insurers was that the current law and the CGL policies are only intended to provide coverage for damage caused by faulty workmanship *to other* property and not to the project itself. The insurers argued that the decision of the Appellate Division shifted the risks inherent in constructing a building from the developer and the general contractor, who were in the best position to control the subcontractors work, to their insurers. The insurers also argued that a subcontractor's faulty workmanship does not have the fortuity element required for the faulty workmanship to constitute an "accident," and is therefore not an "occurrence" under the terms of the policies. According to the insurers, there was no coverage because faulty workmanship is not "property damage" or an "occurrence" under the terms of the CGL policies.

The association, on the other hand, contended that New Jersey courts have consistently found that, while a construction defect itself is not covered under a CGL policy, the damage caused as a consequence of the defect is covered. Thus, the association argued that consequential damages stemming from faulty workmanship constitute a covered "occurrence" under the terms of the policies.

In answering this question of whether the CGL policies issued by the insurers to the developer provide coverage for the association's claims of consequential water damage caused by the subcontractors' faulty workmanship, the New Jersey Supreme Court followed a three-step process. First, it examined the facts of the association's claims to ascertain whether the policies provide an initial grant of coverage. If so, in the second step the Court considers whether any of the policies' exclusions preclude coverage. Finally, in step three, the Court determined whether an exception to a pertinent exclusion applies to restore coverage.

In applying this three-step analysis, the New Jersey Supreme Court relied on a plain reading of the policy's contract language, considered apposite case law from various jurisdictions, and held that, based on the terms of the policy and applicable exclusions, the subcontractor's faulty workmanship was covered under CGL policies. The Court also commented that if this is a risk insurers do not want to insure, they can amend the policies to eliminate the subcontractor exception or add a breach of contract exclusion.

The holding in *Cyprus Point* is significant because an insurer may ultimately have to defend and/or indemnify its insured developer due to damages caused by one or more of the developer's subcontractors. This decision will likely significantly impact coverage positions taken by insurers, parties' litigation strategy, and settlement negotiations attempting to resolve construction defect disputes.

© 2019 Giordano, Halleran & Ciesla, P.C. All Rights Reserved

Source URL: <https://www.natlawreview.com/article/new-jersey-supreme-court-finds-coverage-under-developer-s-commercial-general>