

NJ Justices Weigh Edge For Builders In Defect Coverage Suits

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New Jersey's highest court has agreed to decide whether damages resulting from a subcontractor's defective work on a condominium complex triggered an insurer's duty to defend the general contractor, and attorneys say a ruling favoring the condo association could eliminate an easy out for carriers in construction defect coverage suits.

The New Jersey Supreme Court on Tuesday granted certification to tackle the Appellate Division's July ruling that consequential damages to the common areas of a condo complex and unit owners' property caused by subcontractors' defective work are "property damage" and an "occurrence" under the general contractor's commercial general liability policy.

In the case, plaintiff Cypress Condominium Association Inc. sought coverage from the general contractor on the complex, Adria Towers LLC, for consequential damages caused by the subcontractors' faulty workmanship.

According to attorneys, the Cypress Point decision negated insurers' ability to rely upon the faulty workmanship exclusion in contractors' policies and a handful of prior decisions to prevail on summary judgment in coverage disputes. If the New Jersey Supreme Court affirms the lower court, insurers looking to dodge coverage for construction defect claims will have to determine the precise source and extent of damages, experts say.

"Insurers will have a harder time getting out of claims, because a more fact-specific inquiry will be required," said Sherilyn Pastor, leader of McCarter & English LLP's insurance coverage group. "Whether or not there is coverage will depend on whose work was involved, and what direct and consequential damage it caused."

The Appellate Division further rejected the trial court's reliance on the Third Circuit's 2010 unpublished opinion in Pennsylvania National Mutual Casualty Insurance Co. v. Parkshore Development Corp., which cited Firemen's for the position that work performed by a contractor or subcontractor that damages the general contractor's work is not an occurrence.

The Cypress Point decision was significant to New Jersey practitioners in that "it distinguishes, clarifies and corrects earlier decisions cited by insurers," according to Pastor.

"Gone are the days when an insurer can prevail on a claim simply by pointing to Penn National and a faulty workmanship exclusion

without consideration of its own policy's subcontractor exception to the exclusion and the involved factual circumstances," Pastor said.

"Where the general contractor has purchased insurance protection, its insurance policy now offers it, and those harmed by its subcontractors' faulty workmanship, an important financial asset to meet claims," Pastor said.