Arkansas Association of Defense Counsel

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S.E. Arnold & Co. v. Cincinnati Ins. Co.

A few years ago, the General Assembly passed legislation requiring insurers to amend the definition of "occurrence" in a CGL policy to include "faulty workmanship". This was in response to a series of earlier opinions in which the court ruled that because defective construction was foreseeable, it was not accidental and if not accidental, not an occurrence. There were two later US District Court opinions holding that if defective construction was not an occurrence, then even resulting damage was not covered under the policy. This was a 180 degree about face from earlier decisions that while the builder's defective work itself was not covered, resulting damage was. (i.e. the bad roof is not covered but the carpet and furniture damaged as a result of roof leaks was.)

This gave rise to much hue and cry and the Arkansas Insurance Department, the Chamber of Commerce and the Arkansas Builder's Association supported legislation requiring insurers to amend the definition of "occurrence" to include "faulty workmanship". Many plaintiff's lawyers then argued that the CGL policy applied to faulty workmanship, even if the only item of damage was the builders' own product or work, despite the language of the statute providing that the policy exclusions were unaffected by the statutory revision.

In *S.E. Arnold & Co. v. Cincinnati Ins. Co.,* 2016 Ark. App. 587, the Arkansas Court of Appeals affirmed the trial court's order granting summary judgment to the insurer in a case in which the only defect was in the flooring supplied by the insured, Arnold's Flooring America. The Court of Appeals acknowledged the statutory change but held the "your product" exclusion still applied and since there was no resulting damage (no damage to anything other than the flooring itself), the policy did not apply.

In a decision handed down today, the Arkansas Supreme Court denied the Arnold's petition for review, effectively affirming both the Court of Appeals and the trial court.

I think this is important in that to my knowledge, this is the first appellate decision concerning construction defects and the CGL policy following the statutory change in the policy language. I think the conclusion to be had is that after about a 10-year detour, we find ourselves precisely where we were, the builder's faulty product typically is not covered, while resulting damage is covered.

The AADC thanks Scott M. Strauss of the Barber Law Firm for writing this article.

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