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Sometimes Carriers Have to Defend Chinese Drywall Cases

Well, I'm back from vacation and almost dug out from under the stack that was on my desk when I returned and can now get back to Musings. Thanks for awaiting my return (I'm sure it was with baited breath :))

I have spoken here at Construction Law Musings on the Dragas line of cases that essentially came to the conclusion that no good deed goes unpunished. Just last week, while I was happily at the beach, the Eastern District of Virginia Federal Court decided a case that required an insurer to defend a Chinese Drywall claim against a general contractor.

In Builders Mut. Ins. Co. v. Parallel Design & Development LLC the Court considered a declaratory judgment action by the insurer, Builders Mutual, where the insurer attempted to utilize the "Your Work" and pollution exclusions to try and avoid providing a defense to Parallel. In that case, a homeowner filed a claim in Virginia state court seeking damages for the health and other noxious effects of the Chinese drywall found in her home and for the cost of medical monitoring required due to these effects. Of course, Parallel sought to invoke its rights under its insurance policy.

Upon hearing the arguments by Builders Mutual (many of which were strikingly similar to those made in the Dragas cases), the Newport News, VA division of the Eastern District of Virginia determined that Builders Mutual did have to provide a defense and possible indemnity for these damages. In making this decision, the Court determined that the term "pollutant" found in the policy was ambiguous and therefore the ambiguity worked against the insurer. Furthermore, it determined that the localized nature of the issue made this particular type of noxious emission fall outside of the typical environmental pollution.

The Court went on to conclude that because some, if not all, of the claims made by the homeowner fell outside of the property damage scope of the "Your Work" exclusion in the policy, Builders Mutual was obligated to defend Parallel. In short, Builders Mutual was on the hook to provide a defense.

Without seeing the particular language of the policy at issue, I cannot give my take on why this conclusion was different from some of those in the Dragas cases. All I can say is that a careful reading of your CGL policy with the help of an experienced construction attorney is key to arguing these types of claims.

What are your thoughts?

Image via Wikipedia.

Please check out my Construction Law Musings Blog for more on Virginia construction law and other topics.