Case Alert

Eleventh Circuit Chimes in on Florida's Trigger of Coverage Debate

A recent Eleventh Circuit holding regarding a Florida construction defect case gives builders and general contractors cautioned hope. Construction defect claims often involve latent or progressive property damage that does not become discoverable until several years after the damage commences. Florida courts remain divided on when property damage triggers commercial general liability ("CGL") coverage at the time the damage actually occurs, under the injury-in-fact rule, or at the time the damage becomes manifest, under the manifestation rule. A builder's ability to seek coverage; under its CGL policy for latent or progressive claims in Florida has been hindered by this lack of certainty on the appropriate triggering event for property damage. In Carithers v. Mid-Continent Cas. Co., the Eleventh Circuit reiterated its position that, in the absence of instructive authority from Florida's appellate courts, coverage will be deemed triggered when property damage occurs, and not when it manifests.

The Carithers case arose out of a coverage dispute involving four CGL policies, covering the period of 2005-2008, issued by Mid-Continent Casualty Company ("Mid-Continent") to Cronk Duch Miller & Associates, Inc. ("Cronk Duch"). Cronk Duch was a general contractor hired to build a house for Hugh and Katherine Carithers (the "Carithers"). In 2010, after construction was completed, the Carithers discovered damages to their garage caused by wood rot. The Carithers sued Cronk Duch for the alleged defects, but Mid-Continent refused to defend Cronk Duch in the suit. Mid-Continent argued that, pursuant to the manifestation trigger rule, there was no coverage under the policies because the property damage was discovered in 2010, two years after its last policy had expired. The Carithers, who had been assigned Cronk Duch's rights to collect from Mid-Continent, argued that the injury-in-fact trigger applied, which focuses not on when the damage manifests but on when the damage actually occurs. The district court agreed with the Carithers, and determined that the wood rot damage occurred in 2005, which was within the Mid-Continent 2005-2006 policy. Mid-Continent appealed to the Eleventh Circuit.

The Eleventh Circuit affirmed the district court's decision to apply the injury-in-fact rule, holding that a plain reading of the policy language supports that "property damage occurs when the damage happens, not when the damage is discovered or discoverable." Therefore, the fact that the Carithers discovered the wood rot in 2010 was deemed irrelevant in determining whether there was coverage under the policies. Notably, however, the Eleventh Circuit limited its application of the injury-in-fact rule to cases where determination as to when the damage occurred can be reasonably made.

While the Eleventh Circuit's holding does not solidify the injury-in-fact rule as the appropriate trigger theory under Florida law, the decision does give significant weight to the argument that CGL coverage exists for latent or progressive damages under policies that have terminated prior to the date of manifestation. Ultimately, general contractors and builders in Florida construction projects should scrutinize insurance denials involving trigger of coverage issues.

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