Subcontractor's Insurance to Cover Part of Water Damage at Shaw Park Plaza

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A dispute over insurance coverage yields an appellate court ruling from the Eastern District of Missouri in favor of coverage and a new trial to apportion damages between the insured's work on the construction site and the work of others. The case is *Assurance Company of America v. Secura Insurance Company*, 2012 WL 2757936 (Mo. App. E.D.), decided July 10. The decision involves several often used provisions contained in a general liability insurance policy.

The litigation stems from construction of Shaw Park Plaza, a 14-story office building in Clayton, Missouri. Clayco Construction Company was the general contractor. Clayco contracted with DHP Systems, Inc. to furnish and install a curtain wall system on the building and to glaze the windows that made up the curtain wall. DHP subcontracted with MVG to furnish, install and glaze the windows of the curtain wall system.

After construction and installation of the curtain wall, leaks were discovered in the curtain wall system. Apparently, those leaks caused damage to the curtain wall itself as well as to structural components and other finishes in the building other than the curtain wall, including drywall, carpet and ceiling tiles.

Clayco sued DHP and MVG, alleging that DHP was negligent by improperly and defectively installing the curtain wall system and that MVG was liable for the cost of any repair of the curtain wall system. DHP filed a crossclaim against MVG, requesting contribution and indemnification for Clayco's claims to the extent the alleged damage was caused by or related to MVG's work.

MVG had maintained a commercial general liability insurance (CGL) policy issued by Secura.

The policy contained a "your work" exclusion. This excluded coverage for property damage to the insured's own work, in this case the work of MVG.

The policy also contained a "contractual liability" exclusion. This excluded coverage for property damage for which the insured was obligated to pay damages by reason of the assumption of liability in a contract. The exclusion did not apply, however, to liability for damages assumed in an "insured contract."

Secura initially defended MVG in the lawsuit under a reservation of rights. It stated in the letter to MVG that to the extent Clayco could prove damage to property other than "your work", there may insurance coverage as long as the damage "occurred" during the policy period. Thereafter, however, Secura denied coverage and withdrew its defense a month later.

Clayco and DHP settled their portion of the lawsuit by DHP agreeing to pay Clayco $150,000. DHP's insurer was Assurance Company of America. Assurance paid the settlement amount to Clayco on DHP's behalf. Assurance also had extended $288,927.97 on DHP's behalf in attorney fees and costs in defending against Clayco's claims.

The trial then proceeded on DHP's contribution and indemnity crossclaim against MVG.

At trial, the President of DHP testified that he understood that based on purchase orders MVG was required to indemnify DHP for any and all damages including attorney fees and expenses that related to or arose from MVG's negligent work.

The Director of Technical Services for Clayco testified that MVG was negligent in failing to inspect work previously done on the window openings where MVG was going to install its windows. He said that this caused water to come into the building which damaged the curtain wall as well as other parts of the building. The owner had to tear out and reinstall every piece of glass in the building.

The trial court concluded that DHP was entitled to indemnity and contribution from MVG. The court entered judgment in favor of DHP and against MVG in the sum of $438,927.97. This represented DHP's settlement payment to Clayco plus the attorney fees and costs. The judgment provided that collection could only be from the proceeds of MVG's insurance policies.

Thereafter, DHP filed an equitable garnishment action against MVG and Secura to recover the insurance proceeds and then a motion for summary judgment. DHP argued that the insurance contract between Secura and MVG provided coverage and that the property damage was an "occurrence" for which MVG had assumed liability through an "insured contract" with DHP.

The court entered summary judgment in favor of DHP. The court found that since Secura had abandoned its insured, it could not litigate the issue of an insured contract. The trial court concluded and the appellate court affirmed that the damages were the result of MVG's negligence and thus an occurrence within the meaning of the insurance policy.

Regarding the "your work" exclusion, the appellate court noted that there is no coverage for property damage to the insured's own work. The exclusion does not bar coverage for damages to work or materials other than that performed or furnished by the insured. Thus, the appellate court sent the case back to the trial court for further findings to apportion damages between the work of MVG and the work of others.

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