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The resulting loss exception to the Defective Workmanship Exclusion: Are you covered?

By Adam Whiteman

The First District recently issued an opinion that may help insureds determine whether they will be able to get insurance coverage for damage resulting from a cause which itself is excluded from coverage. Stated another way, when does a policy provide coverage for secondary losses caused by excluded perils?

In *Moda Furniture, LLC v. Chicago Title Land Trust Co., et. al*, 2015 IL App (1st) 140501, the plaintiff ("Moda") operated a business that sold rugs and carpets from inventory stored in a leased facility (the "premises"). The landlord contracted with a roofer to replace the roof on the premises. Moda alleged that the roofer failed to place protective covering over the Premises, and as a result, "gravel and other dirt and crud" fell upon and damaged Moda's expensive rugs and carpets.

Moda filed a claim for the damage to its inventory under the business owners insurance policy it had purchased Travelers Casualty Insurance Company of America ("Travelers"). The claim was denied and Moda filed suit.

On a motion to dismiss, Travelers argued that Moda had pleaded that its damages had resulted from the roofer's faulty work, and, thus, the losses were excluded under the following policy language:

"B. EXCLUSIONS

3. We will not pay for loss or damage caused by or resulting from any of the following...

c. Faulty, inadequate or defective:

- (1) ***
- (2) *** workmanship, repair, construction, renovation, remodeling ***
- (3) ***
- (4) ***

Of part or all of any property on or off the described premises.

Travelers' motion argued that this faulty workmanship exclusion was implicated because Moda had pleaded that its inventory was damaged by the roofer's negligence in its work to "repair or replace" the roof.

In response, Moda argued that there was additional language in the policy that would allow for an exception to the exclusion language cited by Travelers. Specifically, the exception to the workmanship exclusion cited above states:

"If an excluded cause of loss that is listed in Paragraphs (1) through (4) above results in a Covered Cause of Loss, we will pay for the resulting loss or damage caused by that Covered Cause of Loss. But we will not pay for:

- (1) Any cost of correcting or making good the fault, inadequacy or defect itself, including any cost incurred to tear down, tear out, repair or replace any part of any property to correct the fault, inadequacy or defect; or
- (2) Any resulting loss or damage

by a Covered Cause of Loss to the property that has the fault, inadequacy or defect until the fault, inadequacy or defect is corrected."

In reference to this language, Moda argued that "showering [Moda's] inventory with roofing materials, insulation and other crud" constituted a "Covered Cause of Loss." Thus, Moda contended that even if the roofer's work was an "excluded cause of loss," it had nonetheless suffered a resulting "Covered Cause of Loss" that was covered under the above-stated exception to the faulty workmanship exclusion.

The First District Agreed with Moda's interpretation of the insurance provisions. The court explained that "the crux of the appeal is whether the roofer's alleged failures additionally resulted in a "Covered Cause of Loss" and "resulting loss or damage.""

In reaching its decision, the court focused on the fact that the damage in question was property that was *separate from* the property which was the subject of the defective workmanship. According to the court, "the exception to the exclusion applies because the roofer's faulty workmanship (the "excluded cause of loss") caused physical damage to Moda's inventory (the "Covered Cause of Loss") which led to Moda's economic injury (the "resulting loss or damage caused by that Covered Cause of Loss.")"

The court found persuasive Moda's position that it was not seeking reimbursement for repairs to the roof, " but "seeks coverage for the separate damage to its inventory and

business that came after and as a result of the Roofer's faulty workmanship." The court noted that the fact that the policy qualifies that exception with the statement that Travelers "will not pay for *** [a]ny cost of correcting or making good the fault, inadequacy or defect itself" reflects an "intent to draw a distinction between a damage claim to correct the initial faulty construction or other defect (which is not covered) and a claim for resulting damage to other covered property (which is covered)."

The court also noted the importance of identifying the actual "cause" of the damage itself. The dirt and debris caused the damage, not the defective roof. Since dirt and debris would be a "covered cause," there should be coverage, even though the dirt and debris was the result of an excluded cause. Thus, according to the court, "the roofer's faulty

workmanship (the "excluded cause of loss") caused falling dirt and roof debris within the premises (the "Covered Cause of Loss") resulting in the damage to Moda's inventory (the "resulting loss or damage caused by that Covered Cause of Loss").

In the end, the court found that Moda had properly alleged a "Covered Cause of Loss" and a "resulting loss" from that "Covered Cause of Loss," which in turn warrants coverage under the exception to the policy's faulty workmanship exclusion. According to the court, "the "nonexcluded loss" to the inventory remains covered, whereas the cost to correct defects in the roofer's workmanship (that is, roof repairs) would not be covered."

As a final matter, the opinion is also interesting in that this particular provision had not previously been interpreted by Illinois courts. Therefore the parties and the court

examined how other jurisdictions construed the relevant language and circumstances. Both sides were, in fact, able to cite opinions from other jurisdictions that seemed to support their interpretations. The court indicated that the presence of conflicting interpretations indicated that the provision presented an ambiguity and that Illinois law required such ambiguities to be construed in favor of providing coverage. ■

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