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Georgia Supreme Court Holds that Negligent Construction is an "Occurrence" Covered Under a Commercial General Liability Insurance Policy

On March 7, 2011, the Georgia Supreme Court joined the trend in a growing number of jurisdictions and held in American Empire Surplus Lines Ins.

Co. v. Hathaway Development Co., Inc., 2011 Ga. LEXIS 177 (March 7, 2011), that the negligent work of a plumbing subcontractor was an accident and, thus, an "occurrence" within the context of a contract for general liability insurance.

Background

In *Hathaway*, a plumbing subcontractor, Whisnant Contracting Company ("Whisnant"), was sued by its general contractor, Hathaway Development Co. ("Hathaway"), for damages resulting from allegedly negligent plumbing work at three Hathaway job sites. Hathaway sought to recover the cost of repairs caused by Whisnant's faulty workmanship. The costs went beyond those necessary to fix the improper plumbing work; they also included the cost to repair the additional damage to property caused by the improper plumbing work.

Hathaway obtained a default judgment against Whisnant after it failed to answer Hathaway's complaint. Hathaway then sought payment from Whisnant's general liability insurer, American Empire Surplus Lines Ins. Co. ("AESLIC"). AESLIC denied coverage on the ground that the claim did not arise out of an "occurrence," which

was defined generally as an "accident" under the AESLIC policy. According to AESLIC, negligent workmanship could not be deemed an "accident." The trial court agreed and granted summary judgment in favor of AESLIC. Whisnant appealed and the Georgia Court of Appeals reversed, holding that the damage caused by Whisnant's negligent work was caused by an "occurrence."

Holding

Upon review, the Georgia Supreme Court affirmed the court of appeals. Recognizing that the term "accident" was the operative term of the "occurrence" definition, and further that the term was not defined in the AESLIC policy, the court looked to the term's commonly accepted meaning under Georgia law. Doing so, the court found that an "accident" is "an event happening without any human agency, an event which, under circumstances, is unusual and not expected by the person to whom it happens [I]n its common signification the word means an unexpected happening without intention or design." That commonly accepted meaning, the court acknowledged, is in accord with Georgia case law, as well as with "the trend growing in a number of jurisdictions."

In *Hathaway*, Whisnant's allegedly negligent work consisted of (1) installing

a four-inch pipe under a concrete slab where the contract called for a six-inch pipe; (2) improperly installing a dishwasher supply line; and (3) installing a pipe in such a way that the fittings separated under ordinary hydrostatic pressure. Each of these instances of negligent work allegedly resulted in damage to surrounding property built by Hathaway. Applying the commonly accepted meaning of "accident" to the damage at hand, the court concluded that the instances of negligent work, which resulted in unforeseen or unexpected damage, constituted an "occurrence." In so holding, the court expressly rejected the countervailing

assertion that Whisnant's acts could not amount to an "occurrence" since they were "performed intentionally." Rather, as the court explained, a deliberate act performed negligently is an "accident" if the effect of that act is not the expected or intended result.

Implications

The Hathaway decision is of particular significance to property owners, contractors and policyholders alike under contracts for general liability insurance because the decision illustrates that an otherwise intentional act may nevertheless constitute an

"occurrence" where the resulting harm or damage is different from the result that was originally intended by the insured. Consequently, the decision places emphasis on the subjective objective of the insured at the time the act was performed, recognizing that where something goes awry, yielding an unintended or unexpected outcome, any consequential bodily injury or property damage may be the result of a covered "occurrence." The opinion also reinforces the broad definition of the term "accident" the Georgia courts have applied in the absence of a specific policy definition.

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