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FEDERAL COURT IN MARYLAND FINDS NO COVERAGE FOR FAULTY TOWERS' WINDOW CLEAN UP

By James P. Steele, Esq.

On December 20, 2016, the United States District Court for the District of Maryland, applying Maryland law, enforced a Faulty Workmanship Exclusion in an insurance policy and granted summary judgment in favor of the insurer. In James McHugh Construction Co. v. Travelers Property Casualty Co. of America, Judge Paula Xinis, held that the Faulty Workmanship Exclusion was not ambiguous and that the Ensuing Loss exception to the exclusion did not apply.

McHugh, the general contractor of a project to construct a high-rise apartment building in Chicago, Illinois, hired a subcontractor to clean the building's windows. While doing that work, the subcontractor scratched some of the windows. The project's owner rejected the windows, and McHugh incurred costs to repair and replace them.

Travelers insured the project's owner, and McHugh was an insured under the policy through blanket named insured endorsement. Travelers' denied McHugh's claim, citing the Faulty Workmanship Exclusion.

That provision excluded coverage "for loss or damage caused by or resulting from . . . [o]mission in, or faulty, inadequate or defective . . . [m]aterials, workmanship or maintenance." The exclusion contained an Ensuing Loss exception, by which Travelers would pay where the faulty workmanship results in "loss or damage by a Covered Cause of Loss."

McHugh argued that the Faulty Workmanship Exclusion was ambiguous and the ambiguity should be resolved in its favor. The ambiguity arose from the argument that the policy did not specify whether the phrase "faulty workmanship" applied "to processes, like cleaning windows, or final products such as the windows themselves, or both."

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Carr Maloney Member Jim Steele counsels insurers on complex coverage matters and litigates insurance coverage disputes. He also defends clients in construction accidents, professional malpractice claims and personal injury matters.

Jim has wide-ranging experience in the state and federal trial and appellate courts of the District of Columbia and Maryland.

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McHugh also argued that it was unclear whether "faulty workmanship" applied to clean, debris free glass, which was the contracted for work, or to the collateral damage of glass scratched while being cleaned.

Judge Xinis noted that Maryland, unlike many jurisdictions, does not automatically hold ambiguous contract language against the drafter. Rather, where contract language is ambiguous, Maryland courts will turn to extrinsic evidence to determine the parties' intent. Where there is no extrinsic evidence, or where the extrinsic evidence does not resolve the ambiguity, "only then do Maryland courts construe the policy against the insurer 'as the drafter of the instrument.'" (Citation omitted, emphasis in original.)

However, Judge Xinis disagreed with McHugh that the exclusion was ambiguous. "Whether one uses the term 'workmanship' to describe the quality of work in progress or the quality of the final product, the term is being used to refer to the quality or skill of the work performed in the process of creating the product." The Court noted that many other state and federal jurisdictions have similarly found Faulty Workmanship Exclusions to be clear and unambiguous.

Travelers supported its argument that the workmanship was faulty with an affidavit from an engineer who specialized in building facades who said the work "was not performed in accordance with the glass manufacturer's recommendations and industry standards." McHugh countered that the opinion was really aimed at interpreting the policy language, which is the court's role. Judge Xinis accepted "as true that [the subcontractor's] glass-cleaning process fell below industry standards" in part because McHugh conceded that the work did not conform to those standards or to the subcontract.

McHugh further argued that even if the exclusion applied, the loss was still covered by the Ensuing Loss exception because the subcontractor did not install the windows – it cleaned them and damaged them in the course of that cleaning. Travelers countered that the Ensuing Loss exception applies to independent damage that ensues from faulty workmanship. Judge Xinis agreed with Travelers, citing Selective Way Ins. Co. v. Nat'l Fire Ins. Co. of Hartford, 998 F. Supp. 2d 530 (D. Md. 2013), in which faulty pipe installation resulted in water damage to other property.

Accordingly, Judge Xinis granted Travelers' motion for summary judgment, and denied McHugh's cross-motion. It remains to be seen whether McHugh will appeal the ruling.

JAMES P. STEELE is licensed to practice law in the District of Columbia, Virginia and the U.S. District Court of the District of Columbia, Maryland and the Eastern and Western Districts of Virginia. He helps his clients wade through the obstacles and complexities of issues they face in the course of running their businesses and organizations.