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FAULTY WORKMANSHIP EXCLUSION BARS COVERAGE FOR DAMAGE CAUSED BY WORKMANSHIP "EXTERNAL" TO COVERED PROPERTY

By: Helen A. Boyer, Esquire and Thomas J. Braun, Esquire

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On April 16, 2007, Washington Appellate Court Judge Ronald Cox issued an Opinion in City of Oak Harbor v. St. Paul Mercury Insurance Co., Case No.: 57959-2-I (Wash. Ct. App. April 16, 2007), affirming the trial court's grant of summary judgment in favor of St. Paul Mercury Insurance Company ("St. Paul") based on an "all-risks" insurance policy's faulty workmanship exclusion. On June 11, 2007, the court granted St. Paul's motion to publish the opinion.

The opinion arose out of a dispute between the City of Oak Harbor ("City") and St. Paul as to whether the "faulty workmanship" exclusion of an "all-risks" insurance policy applied to bar coverage for damage to a lagoon liner. The City had hired a company to dredge biosolids from lagoons located in the City's wastewater treatment plant. Slip Opinion at *1. The contract prohibited the company from causing any damage to the liner and required the company to repair any damage to the liner that may have resulted. After the company performed the dredging project, the City discovered many tears in one of the liners. Slip Opinion at *2.

The City settled with the company for policy limits under the company's primary liability policy. The City then sought to recover under its own all-risks policy. The trial court granted the insurer's summary judgment motion based on the defense that the faulty workmanship exclusion applied. Slip Opinion at *2.

Appellant City challenged the trial court's grant of summary judgment dismissal on several grounds. However, the appellate court determined that the insurer was properly granted summary judgment, because the faulty workmanship exclusion in

the policy applied. First, the court held that the cause of the liner damage was not a genuine issue of material fact as the City contended, because the City conceded that the company's negligence caused the damage in its trial court brief. Slip Opinion at *5. The court declined to allow the City to later claim that something else may have caused the damage.

In addition, the court held that interpreting the faulty workmanship exclusion did not require consideration of whether the loss was inherent or fortuitous. The court explained that all-risks insurance policies allow recovery for all fortuitous losses unless a specific exclusion applies. Slip Opinion at *7. In this case, St. Paul conceded that the loss in the case was fortuitous and that the all-risks policy applied; however, St. Paul contended that the faulty workmanship exclusion worked to bar coverage. Therefore, the court stated, the main issue before the court was whether the faulty workmanship exclusion applied to bar coverage. Slip Opinion at *7.

Finally, the court held that the faulty workmanship exclusion applied because the liner damage was covered by the plain meaning of "faulty workmanship." Slip Opinion at *11. Although the City argued that the faulty workmanship exclusion did not apply because something "external" to construction of the lagoon liner caused damage to the liner, the court reasoned that the dredging was not external to the "workmanship" being done on the covered property because "it was the workmanship in question." Slip Opinion at *15. According to the court, "although the lagoon and its liner were constructed long ago, [the company] was still negligent in its 'workmanship' when it dredged the lagoon. This was in fact the work [the company] contracted to complete. The faulty manner in which it performed that work was the cause of the property damage." Slip Opinion at *15.

The City also argued that negligently performing the dredging project was not faulty workmanship because it was not foreseeable or inherent in the project, but the court stated that "this [argument] makes no sense." Slip Opinion at *14. In reaching that conclusion, the court reasoned that "if faulty workmanship were only excepted when foreseeable and inherent in a project, the exclusion would cease to have any meaning whatsoever." Slip Opinion at *14. As such, the appellate court affirmed the summary judgment order.

To discuss any questions you may have regarding the opinion discussed in this Alert, and how it may apply to your particular circumstances, please contact Ms. Boyer at (206) 373-7204 or hboyer@cozen.com, Mr. Braun at (206) 808-7828 or tbraun@cozen.com, and/or the Vice Chair of the Cozen O'Connor National Insurance Department, Thomas M. Jones, at (206) 224-1242 or tjones@cozen.com. Cozen O'Connor is a nationally recognized leader in representing the insurance industry in all coverage areas, including all-risk insurance policies.