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PENNSYLVANIA COURT RULES INSURER HAS NO DUTY TO DEFEND OR INDEMNIFY HOME BUILDER AGAINST CONSTRUCTION DEFECT CLAIMS UNDER CGL POLICY

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In courts around the country, construction industry insureds are arguing that run-of-the-mill contractual claims over faulty work by builders and/or their subcontractors are covered by standard commercial general liability policies. The body of case law is still developing and the results are somewhat mixed across jurisdictions. This past fall, Cozen O'Connor lawyers succeeded in obtaining a ruling from Pennsylvania's Supreme Court declaring that such claims do not constitute "accidents" or "occurrences" for purposes of coverage under CGL policies. *Kvaerner Metals Division of Kvaerner U.S., Inc. v. Commercial Union Ins. Co.*, 908 A.2d 888 (Pa. 2006) ("*Kvaerner*"). Simply put, CGL policies do not provide coverage against claims for faulty workmanship resulting in no damage beyond the work product itself.

Recently, Cozen O'Connor successfully fended off efforts by a home builder seeking CGL coverage for construction defects claims. The builder is facing lawsuits and contractual arbitration demands from approximately 100 homeowners who claim that the stucco exteriors of their homes need to be stripped and re-clad, and damage to interior walls repaired, because of defective construction. The builder is seeking coverage from its liability insurers for the cost of repairing the damage, which it alleges was caused by the defective work of its subcontractors.

The insurer filed two declaratory judgment actions. In the first, it sought a declaration that it had no obligation to indemnify the builder for a \$1.1 million arbitration award in favor of four original homeowners. In the second, the insurer sought a declaration that it had no duty to defend against a lawsuit brought by a



second homeowner. The cases were coordinated and cross-motions for summary judgment were filed. The insurer argued that the cases were squarely governed by the *Kvaerner* decision as well as the Pennsylvania Superior Court's decision in *Freestone v. New England Log Homes, Inc.*, 2003 Pa. Super. 24, 819 A.2d 550 (Pa. Super. 2003), *appeal granted*, 577 Pa. 735, 848 A.2d 929 (2004), *appeal dismissed*, 2004 Pa. LEXIS 3393 (June 29, 2004). The builder, on the other hand, sought to distinguish *Kvaerner* and alternatively attempted to convince the court that its "reasonable expectations" of coverage should trump the policies' unambiguous language.

On May 1, 2007, the Montgomery County Court of Common Pleas issued two orders in *Millers Capital Insurance Co. v. Gambone Brothers Development Co.*, Case No. 05-26385 (coordinated with Chester County, Case No. 06-01455), granting the insurer's motions in full. The Court ruled that the insurer had no duty either to defend the pending lawsuit or to indemnify the builder for the arbitration award. As of this writing, the Court has not issued an opinion, but the Court's orders nevertheless provide important reaffirmation that *Kvaerner* has settled the issue once and for all in Pennsylvania -- CGL policies do not provide coverage for defective workmanship, whether by a builder or by its subcontractors, where the only resulting damage is to the builder's own work product.

For a further analysis of these issues and their impact on the insurance industry, please contact Jacob C. Cohn, Esq. (215-665-2147; jcohn@cozen.com), Michael A. Hamilton, Esq. (215-665-2751; mhamilton@cozen.com), or Joseph A. Arnold, Esq. (215-665-2795; jarnold@cozen.com) of Cozen O'Connor's Philadelphia office. Cozen O'Connor is a nationally recognized leader in representing the insurance industry in all coverage areas, including commercial insurance contracts.