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Georgia Supreme Court Decision Expands Coverage Under CGL Policies

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A recent Georgia Supreme Court decision expanded coverage under commercial general liability (CGL) policies to the benefit of parties damaged by the faulty workmanship of a contractor. In *American Empire Surplus Lines Ins. Co. v. Hathaway Development Co, Inc*., the court held that it is possible for a CGL policy to cover damage to property that is unforeseen or unexpected when it arises from a contractor's faulty work. The opinion gives clear direction on an issue that had resulted in prior inconsistent decisions by lower Georgia courts.

In *Hathaway*, a plumbing subcontractor negligently installed work on three projects for the same general contractor (Hathaway). In addition to Hathaway having to correct the negligent work of its subcontractor, the negligent work damaged other property that Hathaway was constructing. Hathaway sued the subcontractor for damages and obtained a default judgment. Afterward, Hathaway presented the judgment to the subcontractor's CGL insurer, American Empire, for payment.

American Empire denied Hathaway's claim under the subcontractor's CGL policy, arguing that the damages did not arise from an "occurrence." As is typical in CGL policies, American Empire's policy only covered claims that arise from an "occurrence," which it defined as an "accident." As is also typical with CGL policies, American Empire's policy did not define the term "accident." American Empire claimed that Hathaway's damages could not have arisen from an accident because the subcontractor's work was intentional, even though the work may have been negligently performed. If the work was intentional, then the consequences of the work could not be an "accident." Hathaway sued American Empire for coverage under the policy.

Thus, the issue in *Hathaway* was whether unintentional damages that result from an intentional act (i.e., installation of the plumbing) could be considered an "accident." Prior decisions by the Georgia Court of Appeals gave conflicting answers to this question. In *Hathaway*, the Georgia Supreme Court looked favorably upon the line of Georgia Court of Appeals cases holding that an accident could arise from faulty workmanship. The court was also persuaded by what it characterized as a trend among other jurisdictions to interpret the term "accident" in this manner. The following quote in the opinion from the Texas Supreme Court summarizes the *Hathaway* holding: "[A] deliberate act, performed negligently, is an accident if the effect is not the intended or expected result; that is, the result would have been different had the deliberate act been performed correctly." *Lamar Homes v. Mid-Continent Cas. Co*., 242 S.W.3d 1, 16 (Tex. 2007).

Although the *Hathaway* opinion broadens coverage under the CGL policy, it does not result in insurance coverage for all unexpected damages arising from faulty workmanship. The opinion was based solely on the definitions of "accident" and "occurrence," which are part of a policy's insuring clause. The opinion said nothing about the group of CGL policy exclusions known as the "business risk" exclusions, which generally preclude coverage for damages to the insured's own work. Thus, in a future case with similar facts, the subcontractor's CGL policy may cover the damages to the general contractor's other work, but not cover the cost to repair defective work installed by the subcontractor. Likewise, the general contractor's CGL policy may cover none of the damages because all of the work may be considered part of the general contractor's work or products, which may trigger the business risk exclusions of the policy.

Due care should be taken to review the relevant insurance policies for coverage and to make certain that timely notices are given to the insurers to preserve any coverage that exists.