PLUNKETT COONEY

Ensuing Loss Clause Coverage Update

April 1, 2025

Ensuing Loss Clause – Eighth Circuit (Arkansas Law)

Bob Robison Commercial Flooring, Inc. v. RLI Ins. Co.
No. 23-3531, 2025 WL 852889 (8th Cir. Mar. 19, 2025)

The U.S. Court of Appeals for the Eighth Circuit affirmed the federal district court's grant of summary judgment in favor of RLI Insurance Company (RLI) and against Bob Robison Commercial Flooring Inc. (BRCF). The issue in the case was whether an ensuing loss clause in BRCF's builder's risk insurance policy precluded coverage.

BRCF was hired to install a vinyl gym floor with painted volleyball and basketball lines at a middle school in Arkansas. After BRCF installed the floor, it subcontracted the painting portion to Robert Liles Parking Lot Services. The painting work was faulty, and the floor was rejected in December 2021. Due to the faulty work, BRCF was required to remove and replace the floor and paint new lines. BRCF submitted a claim for its loss to RLI, seeking coverage under the Installation Floater Coverage Part of its policy.

The Installation Floater covered "direct physical loss or damage caused by a covered peril … at 'your' 'jobsite' and [while] 'you' are installing, constructing, or rigging as part of an 'installation project.'" The perils covered were "risks of direct physical loss or damage unless the loss is limited or caused by a peril that is excluded." The pertinent excluded peril at issue was "loss or damage that is caused by or results from" "inherent defects, errors, or omissions in covered property (whether negligent or not) relating to … 2) workmanship or construction." The ensuing loss clause, however, stated that "if a defect, error or omission … results in a covered peril, [we] do cover the loss or damage caused by that covered peril."

RLI rejected the claim because the loss or damage was caused by errors in covered property due to faulty workmanship. BRCF sought a declaratory judgment and breach-of-contract damages for the full loss. The district court granted RLI summary judgment, concluding that the policy unambiguously excluded coverage for damages and loss resulting from defective workmanship, and the subcontractor's negligent paint job was the sole reason the gym floor was damaged. BRCF appealed, and the appellate court affirmed, agreeing that the exclusionary language in the policy was not ambiguous and clearly excluded loss or damage resulting from the defective workmanship. The appellate court declined to accept BRCF's argument that the ensuing loss clause covered the damage

requiring replacement of the vinyl gym floor because it was a separate peril from the faulty paint job. The appellate court held that the ensuing loss clause requires that a separate non-excluded peril cause a restored loss, and it was undisputed that faulty workmanship was the sole and exclusive cause of loss that occurred the moment the paint was applied.

By Joshua LaBar