PLUNKETT COONEY

Related Claims, Late Notice Coverage Update

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North Carolina, New York Coverage Update
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Related Claims – Fourth Circuit (North Carolina Law)

Stewart Eng'g, Inc. v. Cont'l Cas Co.
--- Fed. Appx. ---, 2018 WL 5832805 (4th Cir. Nov. 7, 2018)

The U.S. Court of Appeals for the Fourth Circuit ruled that several suits against a North Carolina engineering firm relating to the collapse of two separate pedestrian bridges were "related claims" under a professional liability and pollution incident insurance policy. Stewart Engineering, Inc. (Stewart) contracted to furnish structural engineering designs for two new pedestrian bridges on a community college campus. Bridge 1 collapsed, killing one construction worker and injuring four others. Bridge 2 collapsed less than a day later. Continental Casualty Co. (Continental) defended and indemnified Stewart against multiple claims arising out of the collapse of Bridge 1 up to the $3 million single claim limit.

Stewart subsequently filed suit against Continental in the U.S. District Court for the Eastern District of North Carolina, arguing that Continental must defend and indemnify Stewart up to the $5 million aggregate limit for claims arising out of the collapse of Bridge 2 because those claims are not "related claims" under the policy. The district court held that the Bridge 2 claims were related to the Bridge 1 claims and, therefore, that Continental had no further obligation to defend or indemnify Stewart. The appellate court affirmed the judgment of the district court, noting that "Stewart executed a single contract for the design of both bridges, the same Project Manager and Project Engineer worked on the design of both bridges, and, crucially, the same design flaw caused the collapse of both bridges." Therefore, the claims were "related claims" and not subject to the $5 million aggregate limit.

Late Notice – New York

Lafarge Bldg. Materials Inc. v. Harleysville Ins. Co. of N.Y.
--- N.Y.S.3d ---, 2018 WL 5659750 (N.Y. App. Div. Nov. 1, 2018)

New York's Supreme Court Appellate Division, Third Department (Appellate Division) held that Harleysville Insurance Company of New York (Harleysville) had no duty to defend or indemnify Lafarge Building Materials Inc. (Lafarge) under a policy in which Lafarge was named as an additional insured.

Harleysville insured a company that was performing services at Lafarge's factory (the contractor). The contractor had agreed, pursuant to its contract with Lafarge, to name Lafarge as an additional insured under its policy. An employee of the contractor was injured in Lafarge's factory on July 9, 2005 and brought suit against Lafarge in March 2008. Lafarge notified Harleysville of the suit in January 2009, eight months after Lafarge had been served with the complaint.

The Appellate Division upheld the trial court's grant of summary judgment in favor of Harleysville on the basis of the policy's late notice provision, which required an insured to provide notice to the insurer within a reasonable time. Because the policy was issued prior to the 2009 amendment of Insurance Law § 3420, Harleysville was not required to show that it had been prejudiced by Lafarge's late notice. Accordingly, the Appellate Division found that Lafarge was precluded from coverage under the Harleysville policy for not complying with the policy's notice condition.

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