PLUNKETT COONEY

Vehicle, Construction Defect, Prompt Payment of Claims Coverage Update

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The e-POST

'Vehicle' – Second Circuit (New York Law)

1070 Park Ave. Corp. v. Fireman's Fund Ins. Co.
--- Fed.Appx. ---, 2019 WL 2754954 (2nd Cir. July 2, 2019)

The U.S. Court of Appeals for the Second Circuit held that an insurer had no duty to reimburse the insured for costs incurred in connection with the restoration of gas service following damage to a gas line. The insured, 1070 Park Avenue Corporation (1070 Park), claimed that the building's gas line was ruptured when workers damaged a gas meter while moving a wheeled recycling bin in the building. 1070 Park alleged that it sustained damages in excess of $500,000 as a result of work performed in order to upgrade the gas system to withstand a high-pressure test required by the Administrative Code of the City of New York. 1070 Park's insurer, Fireman's Fund Insurance Company (FFIC), denied coverage for the loss based on an exclusion precluding coverage for costs associated directly or indirectly with the enforcement of any law or ordinance that requires the testing of a gas system for integrity or condition.

1070 Park sued FFIC, arguing that coverage existed for the loss based on an exception to the exclusion, namely, that coverage applied when the gas system testing was caused by "Aircraft or Vehicles." Specifically, 1070 Park argued that the exception to the exclusion applied because the recycling bin qualified as a "vehicle" since the bin was on wheels. The appellate court, however, held that the recycling bin was not a vehicle as "not everything with wheels is a vehicle." The appellate court found that the term "vehicle" as used in the policy plainly referred to objects that are reasonably expected to be used to transport people or goods that can cause massive losses. Accordingly, the appellate court held that FFIC had no duty to reimburse 1070 Park for the claimed loss.

Construction Defect – Fourth Circuit (New Jersey Law)

Schnabel Foundation Co. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Penn.
--- Fed. Appx. ---, No. 18-1782 (4th Cir. July 10, 2019)

The U.S. Court of Appeals for the Fourth Circuit held that National Union Fire Insurance Company of Pittsburgh, Pennsylvania (National Union) had no duty to defend Schnabel Foundation Company (Schnabel) in a lawsuit alleging property damage to a 17-story mixed-use building (Site). Schnabel, a subcontractor, was responsible for constructing a support of excavation system (SOE) at the Site, but did so improperly, causing property damage to neighboring properties. The neighboring buildings brought a lawsuit seeking damages for property damage and business disruption, and the building owner of the Site sought damages for construction delay. National Union denied coverage to Schnabel, in part, based on Exclusion D of the commercial general liability policy that excluded coverage for "Damage to Impaired Property or Property Not Physically Injured."

The appellate court affirmed summary judgment in favor of National Union, holding that New Jersey law was clear that commercial general liability policies "cover damages to third-party property, not costs to replace a contractor's own faulty work." The appellate court further found that Exclusion D applied as the Site constituted "Impaired Property" as it was tangible property that became less useful through the incorporation of the defective SOE. The appellate court recognized that the Site would alternatively be "Property Not Physically Injured" under Exclusion D because it "suffered no physical injury due to the defective SOE," as "only the Site's neighboring properties suffered physical injury through floor buckling and other cognizable property damage." The appellate court also found Schnabel's work satisfied the enumerated "Property Damage" requirement in Exclusion D as the "SOE work was clearly defective, and [Schnabel's] failure to timely construct an adequate SOE ... caused 'a delay or failure ... to perform a contract.'" Accordingly, the appellate court held that Exclusion D barred coverage for the damage and that summary judgment in favor of National Union was proper.

Prompt Payment of Claims – Texas

Barbara Techs. Corp. v. State Farm Lloyds
--- S.W.3d ---, 2019 WL 2710089 (Tex. June 28, 2019)

The Supreme Court of Texas held that an insurer's payment of an appraisal award does not preclude a policyholder from later pursuing damages for delay under the Texas Prompt Payment of Claims Act (PPCA). In the underlying case, Barbara Technologies Corporation (BTC) filed a claim with its property insurer, State Farm Lloyds (State Farm), for wind and hail damage after a storm in the spring of 2013. State Farm denied the claim on two separate occasions, prompting BTC to file suit in July 2014. In early 2015, State Farm invoked the appraisal process and ultimately paid an award of $179,000 to BTC. Thereafter, BTC voluntarily dismissed all of its claims against State Farm except for its claim under the PPCA.

The trial court found that State Farm was not liable to BTC under the PPCA because State Farm had

paid the appraisal award. The intermediate appellate court affirmed the decision of the trial court. On appeal, the Supreme Court of Texas held that an insurer's payment of an appraisal award does not preclude a subsequent action for delay in payment under the PPCA. Specifically, the court stated that "[i]f an appraisal is requested, either by the insurer or the insured, after a claim has been rejected in whole or in part, and the insurer immediately pays the award, it is nevertheless liable for 18% interest and attorney fees [under the PPCA] if the claim is later adjudicated to be covered by the policy." Accordingly, the Supreme Court of Texas held that BTC's claim under the PPCA was not barred by State Farm's payment of the appraisal award.

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