

SECOND CIRCUIT FINDS THAT DEFECTIVE WORK CAN BE COVERED AS AN “OCCURRENCE” UNDER CGL POLICY

Scottsdale Insurance Co. v. R.I. Pools Inc., et al.

In a recent Second Circuit decision, the court found that certain defective construction work can be considered an “occurrence” under a Commercial General Liability policy. In Scottsdale Insurance Co. v. R.I. Pools Inc., et al., Docket No. 11-3529-cv (2d. Cir. March 21, 2013), the Second Circuit reversed the District Court’s granting of summary judgment in favor of Scottsdale.

The case arose out of claims against R.I. Pools, which had been hired to install swimming pools. R.I. Pools in turn hired subcontractors to supply concrete and perform the concrete pours. Several pools subsequently developed cracking and a number of purchasers sued R.I. Pools for the damage. Scottsdale insured R.I. Pools under a commercial general liability (“CGL”) policy. Scottsdale filed a declaratory judgment action against R.I. Pools to determine whether the claims of the pool purchasers were covered losses. The District Court granted summary judgment in favor of Scottsdale on the ground that the defective work was not an “occurrence.”

Applying Connecticut law, the Second Circuit noted that Connecticut precedent held that defective work did not constitute an “occurrence” because defective work is not an “accident,” as the term is generally defined. However, the court found in this case that certain language in the “your work” business risk exclusion contemplated that at least some defective work would be covered, and therefore defective work could be considered an “occurrence.” Specifically, the “your work” exclusion included an exception when the work was performed by a subcontractor.

The court reasoned that since this language expressly provided that in some circumstances the insured’s work would be covered, those defects in the work must fall within the definition of “occurrence.” The court remanded the case for consideration of the issue of whether the defective work was within the subcontractor exception to the “your work” exclusion.

