

WRF Prevails on Summary Judgment; No Coverage for Construction Defects Claim under Virginia Law

December 31, 2002

Washington, DC—A Virginia trial court has granted summary judgment to a Zurich entity represented by Wiley Rein & Fielding. The court ruled that claims for faulty workmanship do not arise out of a covered "occurrence" within the meaning of a commercial general liability policy and, in any event, are excluded under a business risk exclusion in the policy. *RML Corporation v. Assurance Company of America*, No. CH02-127 (Norfolk Cir. Ct. Dec. 31, 2002).

The policyholder was the developer and general contractor for a condominium project located in Norfolk, Virginia. The condominium association sued the policyholder for breach of contract and warranty, constructive fraud, and violation of the Virginia Consumer Protection Act. The court first ruled that the term "occurrence" was unambiguous and, consistent with the majority of courts nationwide, does not extend coverage to claims concerning the policyholder's failure to satisfy its obligations under a contract. The court further held that the claims for fraud and violation of the Virginia Consumer Protection Act entailed intentional acts, "which can never be an accident."

In the alternative, the court also ruled that a business risk exclusion in the policy barred coverage. Specifically, the court concluded that exclusion j(5) barred coverage for "property damage" to real property that arises out of operations performed by or on behalf of the policyholder and that exclusion j(6) barred coverage for "property damage" to property that must be restored, repaired or replaced because the policyholder's work was incorrectly performed on it.

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