



## California Insurance Coverage Alert

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***Clarendon America Insurance Company v. General Security Indemnity Company of Arizona, 193 Cal.App.4th 1311 (2011).***

**Court of Appeals of California, Second District, Division Two**

**When an insured is fired before completion of the project, there is no coverage available under the products-completed operations, and claims for defective work are precluded by the faulty workmanship exclusions, j(5) and j(6). The same is true if the insured walks off the job before completion.**

Clarendon insured Hilmor Construction from July 1, 2000 to July 1, 2001. General Security provided a year of general liability coverage to Hilmor for the following year. In 1999, Hilmor contracted to build a custom single-family home in Beverly Hills. The contract called for its complete construction, including recording a notice of completion such that the homeowners would be able to occupy the entire property.

On May 18, 2001, before the construction was completed, the homeowners terminated their contract with Hilmor, and Hilmor assigned all subcontracts to the homeowners. It was undisputed that the construction was not completed when Hilmor was terminated. Construction continued without Hilmor and a temporary certificate of occupancy was issued on September 24, 2001.

In 2004 the homeowners sued Hilmor and the subsequent contractor for construction defects. Hilmor tendered its defense and indemnity to Clarendon and General Security. Both agreed to defend, but in 2006, General Security withdrew from the defense claiming there was no potential for coverage because Hilmor's work was not completed before the inception of the General Security policy, and thus, the products-completed operations hazard clause was not triggered, and the faulty workmanship exclusions and other exclusions precluded coverage.

In 2008, Clarendon settled for its \$1 million policy limit. It also spent almost \$475,000 on Hilmor's defense. Clarendon then sued General Security for contribution toward the defense and indemnity. The trial court granted summary judgment to General Security, finding it had met its burden of showing there was no potential for coverage under its policy and the Court of Appeal affirmed.

It was undisputed that Hilmor did not work on the project during the General Security policy period. The products-completed operations hazard in the policy is intended to provide coverage for property damage that occurs after an insured's work is completed.

The General Security policy contained the standard definition of products-completed operations. Hilmor's work on the project ended on May 18, 2001, when Hilmor was fired from the job. At that time the project was not yet complete. Under those circumstances the products-completed operations hazard coverage does not apply as subpart a(2) of that provision states that coverage does not apply to work that has not yet been completed or abandoned. The contract identified completion as allowing the homeowners to occupy the property, and that had not yet occurred when Hilmor was terminated. Nor did Hilmor abandon the project.

“Abandon” is traditionally used where both sides to a contract expressly intend to abandon it, releasing both sides from the duties under the contract. Hilmor did not “abandon” the project; Hilmor was terminated from it. Thus, there was no mutual intent to abandon the contract.

The court rejected Clarendon’s argument that the homeowners’ termination of the Hilmor contract terminated Hilmor’s obligations under the contract, and thus, Hilmor’s work on the project was finished for purposes of the products-completed operations provision.

The court also rejected Clarendon’s next argument, that the house, including Hilmor’s work, was put to its intended use during General Security’s policy period when the temporary certificate of occupancy was issued. But, as the court noted, the exception to the “put to its intended use” part of the definition is “other than by another contractor or subcontractor working on the same project,” and unquestionably, Hilmor’s work was taken over by the subsequent contractor. Thus, Hilmor’s partial work was never put to its intended use by anyone other than the subsequent contractor.

There was no completed operations coverage because Hilmor was fired, and it never completed its work. When a contractor has not completed the work it was hired to do, the products-completed operations hazard coverage does not apply.

The court also analyzed the faulty workmanship exclusions, j(5) and j(6). These faulty workmanship exclusions preclude coverage for deficiencies in the insured’s work. Exclusion j(5) excludes coverage for property damage that occurs while the insured is performing operations on that property. Exclusion j(6) excludes coverage for the physical injury to, or loss of use of, that part of the property that must be replaced because Hilmor’s work was performed incorrectly. Since this was the basis of the homeowners’ claims against Hilmor, that its work was defective, there was no coverage under the General Security policy.

Finally, the court looked at General Security’s “claim(s) in progress” exclusion, which precludes coverage for property damage that began before the inception of the policy. Thus, there was no coverage available under the General Security policy for property damage that began before July 1, 2001. General Security cited to a letter from Clarendon’s counsel stating that property damage “may very well have resulted prior to July 1, 2001.” While Clarendon argued that this statement was mere speculation, the court held that the exclusion precluded any possibility of coverage for damages which began or took place prior to the effective date of the General Security policy.

Based on the definition of products-completed operations hazard, and the application of the exclusions, the court found that regardless of whether the claims asserted against Hilmor arose from damage occurring while Hilmor was on the job, or after Hilmor left the job, General Security met its burden of proving that there was no potential for coverage for the homeowners’ claims under the policy.

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