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Insurance Coverage Decisions: Issued Today - Impact Tomorrow



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December 30, 2008

Pennsylvania Supreme Court Declines to Hear Appeal in Millers Capital Insurance Company v. Gambone Bros.

Coverage for Consequential Damages from Construction Defects Remains Unavailable in Pennsylvania

In one of the most highly anticipated allocatur decisions that I can recall, the Supreme Court of Pennsylvania today declined to hear the appeal of Gambone Brothers in Millers Capital Insurance Company v. Gambone Brothers, 941 A.2d 706 (Pa. Super 2007).

Gambone has been the subject of much discussion in Pennsylvania coverage circles since it was decided by the Superior Court one year ago almost to the day.

Briefly, the insured in Gambone, a property development company, conceded that the Pennsylvania Supreme Court's decision in *Kvaerner Metals v. Commercial Union Insurance Co.*, 908 A.2d 888 (Pa. 2006) "stands for the broad principle that an insurance claim under an occurrence based CGL policy that defines the term 'occurrence' as an accident cannot be premised on a claim of faulty workmanship."

However, Gambone argued that the damage at issue did not merely involve claims for faulty workmanship that led to the failure of stucco exteriors *but also* involved claims for ancillary and accidental damage *caused by* the resulting water leaks to non-defective work inside the home interiors. Gambone argued that the resulting water damage constituted an "occurrence," even though the damage to the faulty stucco exteriors does not.

The Superior Court in *Gambone* disagreed and held that, under *Kvaerner*, a distinction between faulty workmanship and damage allegedly caused by faulty workmanship is not a basis to find coverage. The practical effect of *Gambone* has been to preclude coverage under Pennsylvania law for the foreseeable consequential damages that are caused by faulty workmanship.

The Pennsylvania Supreme Court's decision to decline to hear Gambone's appeal means that Pennsylvania will remain one of the most restrictive states in the country for construction defect coverage.

A copy of the Pennsylvania Supreme Court's Order denying *allocatur* can be found here:

<http://www.pacourts.us/OpPosting/Supreme/out/219mal2008.pdf>

Please let me know if you have any questions.

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