BINDING AUTHORITY
Insurance Coverage Decisions: Issued Today - Impact Tomorrow
White and Williams LLP
Randy J. Maniloff
maniloffr@whiteandwilliams.com

September 26, 2008

Montrose Endorsement: If At First You Don't Succeed, Trial Trial Again

Insurer Finally Wins a Montrose Endorsement Case

Decisions involving the "Montrose Endorsement" have been few and far between since it was introduced into the CGL Insuring Agreement in 2001 (by endorsement in 1999). And those few cases to have addressed it have not interpreted it as insurers had intended. As I mentioned in my "Emerging Issues" presentation at last week's White and Williams Coverage College, insurers are 0 for 3 by my scorecard. On Tuesday, a Washington District Court handed an insurer its first win in a Montrose Endorsement case – interpreting the policy language as it was intended. [However, it should be noted that no insurer has ever come back to win 4 straight Montrose Endorsement cases after being 3 down in a 7 case series.]

In *Trinity Universal Insurance Co. v. Northland Insurance Company*, Western District of Washington, 07-0884 (September 23, 2008), the court addressed coverage for an underlying claim between a general contractor (Pryde) and a subcontractor (Jefferson) that was hired to complete exterior stucco work on a condominium project. After the project was completed in 1999 the general contractor received complaints about water leaks around the windows. Tests to determine the cause of the damage were conducted by a third party, which were inconclusive. Jefferson later conducted tests which concluded that the water intrusion was most likely caused by the windows -- not the stucco that it had installed. The condominium association brought suit on April 13, 2001 against the general contractor (Pryde) for defective construction. Pryde later filed a third-party claim against Jefferson.

A contribution action was brought by Trinity Insurance, Jefferson's insurer from 1998 to 2001, against Northland Insurance, from whom Jefferson purchased a policy on May 11, 2001. Defendant Northland sought summary judgment arguing that its policy did not apply because Jefferson knew of the damage giving rise to the claim prior to the policy's inception. Trinity Insurance countered that Jefferson was not on "actual subjective notice of the leak issue" because Jefferson's personnel never believed that its work contributed to the problems and therefore never had "real notice" that it would be responsible for the problems.

The policy in question excluded from coverage any property damage that was known by the insured to have occurred in whole or in part prior to the policy period. The court quoted the relevant language of the Montrose Endorsement.

The court stated that, under the language of the policy, the real issue was not whether Jefferson had notice of whether it was liable, but whether Jefferson had notice of the damage itself. The court concluded that the record in the case presented ample evidence that Jefferson knew of the property damage. The correspondence between the general and sub-contractor complaining of the water intrusion problem and the fact that Jefferson conducted tests indicated to the court that Jefferson was well aware of the property damage prior to the policy period. Therefore, coverage was excluded.

Trinity Universal Insurance Co. v. Northland Insurance Company interpreted the Montrose Endorsement exactly as insurers had intended when they adopted it, namely, to tie "known loss" to the insured's *knowledge of property damage* prior to the policy period and not to the insured's *knowledge of its liability* for property damage prior to the policy period.

A copy of *Trinity Universal Insurance Co. v. Northland Insurance Company* is attached. If you have any questions or comments, please let me know.

[Appreciation is expressed to White and Williams Research Assistant Sarah Burger (Villanova Law, class of 2010) for her help with the preparation of this issue of *Binding Authority*.]

Randy

Randy J. Maniloff
White and Williams LLP
1800 One Liberty Place | Philadelphia, PA 19103-7395
Direct Dial: 215.864.6311 | Direct Fax: 215.789.7608
maniloffr@whiteandwilliams.com