

South Carolina Litigation Update

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CGL Coverage Decision in Construction Defects Case

Harleysville Group Insurance v. Heritage Communities

SC Supreme Court Issues Ruling on Coverage Decision in Construction Defects Case

On January 12th, 2017, the Supreme Court upheld prior rulings in *Harleysville Group Insurance v. Heritage Communities*, which clarify issues related to covered property damages, reservation of rights letters and punitive damages in construction defect cases. These issues are critical to many of our Construction Litigation clients in how they may choose to handle and assess cases going forward in South Carolina.

Major Issues Decided by the Court:

Property Damages: The Court affirmed a prior ruling that the standard definition of covered “property damage” occurring during a policy period includes damages resulting from shoddy construction, **but not** the shoddy construction itself.

Reservation of Rights: The Court held that the Reservation of Rights letter in this case did not provide the insured enough detail that there might be a conflict of interest between the insurer and the insured and that the insured might need its own counsel or request a special verdict to allocate damages between what was covered and what was not covered.

The insured controlled the defense and did not ask for an allocation and, as a result, the Court rejected the argument that damages should be divided between the covered and non-covered damages and instead allocated the damages based on Harleysville’s time on the risk.

The Court also pointed out that the Reservation of Rights failed to advise the insured that the insurer might file a Declaratory Judgment action to contest coverage.

Of particular importance to our clients, the Court, in a footnote, indicated that it might have considered a six-month delay in sending the Reservation of Rights letter “untimely,” had the issue been raised by the parties.

Punitive Damages: The Court reaffirmed the distinction between compensable actual damages and punitive damages. All of the actions that justified punitive damages, in this case, took place during the policy period. The insurance policy did not explicitly exclude punitive damages and thus the Court held that they were covered.

The Court noted that it was not making a “bright-line rule that punitive damages may never be the subject to allocation based on time on the risk,” but

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