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# Insurance Coverage for Defective Workmanship

**By G. Trippe Hawthorne**

A recent case out of Louisiana's Second Circuit Court of Appeals, *Broadmoor Anderson v. National Union Fire Insurance of Louisiana*, 40,096 (La.App.2 Cir. 9/28/05) — So.2d —, could be big news for general contractors, owners, and insurers.

Louisiana's Second Circuit agreed with a lower court's opinion that an upstream contractor was entitled to insurance coverage for the cost of repairing defective work performed by a subcontractor.

The Project was construction of the Hollywood Casino Hotel in Shreveport. The insurance policy at issue was a Commercial General Liability Policy, purchased by the project owner, and which named as additional insureds "all contractors" and "all tiers of subcontractors."

After construction was completed, the owner began to notice problems with the ceramic tile shower stalls in many of the guest rooms. It was determined that the leaks were caused by defective workmanship in the installation of the shower pans, and the general contractor and subcontractor collaborated on a remediation of the problem.

Shortly after the repair efforts began, the general contractor made a formal demand on the CGL carrier for the cost to the general contractor for the remediation, alleged to be nearly $1,500,000.00. Ultimately, the general contractor filed a lawsuit against the insurer, and obtained a summary judgment against the insurer finding coverage. The Second Circuit affirmed this decision, but remanded the case to the lower court for a determination of the proper amount of coverage.

This is a very important decision because it provides a potential way around a line of cases dating back to at least 1965 which hold that a contractor is not entitled to insurance coverage under a CGL policy for property damage caused

by the contractor's own defective performance. The common refrain in these cases is that "a CGL policy is not intended to serve as a performance bond."

The ruling in *Broadmoor Anderson* does not directly affect that rule, because the downstream contractor which is responsible for the defective work is not going to be entitled to any insurance coverage. Broadmoor Anderson does, however, provide a potential roadmap around those cases where the fact pattern is sufficiently similar - (1) is a CGL policy which names the upstream contractor as an insured or additional insured, (2) damage caused by defective work by a downstream contractor, and (3) the CGL policy provides coverage for completed operations.

This precedent could be of tremendous benefit to owners and contractors by providing for insurer supplied financing for remediation of property damage caused by the defective workmanship of a downstream contractor. The insurer's recourse, however, may be a demand against the contractor guilty of the defective performance, seeking to recoup the insurer's costs.

The Opinion notes that as of the date of this comment, November, 1, 2005, it has not been released for publication in the permanent law reports, and as such, is subject to revision or withdrawal. Additionally, because of the procedural posture of the case, the Supreme Court could still reverse the Second Circuit, and other Appellate Courts could come to a contrary conclusion. Nevertheless, the opinion opens a new door for owners and contractors dealing with the unfortunate situation of remedying defective workmanship of a downstream contractor.

**About the Author:**

*Trippe Hawthorne is an attorney in the Baton Rouge office of Kean Miller. He joined the firm in 2004 and practices in the litigation group. He has experience in a wide variety of commercial litigation, construction law, and general litigation matters, including business associations, political subdivisions and local government, attorney's fees litigation, False Claims Act, class action litigation, and redhibition claims. Trippe served as a Law Clerk to Judge John V. Parker, United States District Court, Middle District of Louisiana from 1995-1996. He can be reached at 225.389.3741 or trippe.hawthorne@keanmiller.com*