NOT DESIGNATED FOR PUBLICATION

ASSOCIATED BRANCH PILOTS OF THE PORT OF NEW ORLEANS	*	**NO. 2005-C-1126**
	*	**COURT OF APPEAL**
VERSUS	*	**FOURTH CIRCUIT**
MEGGA INDUSTRIES, INC., ET AL.	*	**STATE OF LOUISIANA**

*** * * * * * ***

ON APPLICATION FOR WRITS DIRECTED TO
25TH JDC, PARISH OF PLAQUEMINES
NO. 48-485, DIVISION "B"
Honorable William A. Roe, Judge
* * * * * *
CHIEF JUDGE JOAN BERNARD ARMSTRONG
* * * * * *

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Patricia Rivet Murray and Judge Max N. Tobias Jr.)

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WRIT DENIED.

In this writ application the relator seeks reversal of the trial court's judgment denying relator's motion for summary judgment. Because we find that the relator has not met its burden of proving that there is no genuine issue as to material facts and that it is entitled to judgment as a matter of law, we deny relief. La.C.C.P. art. 966(B). The policy provisions concerning the work exclusion, definition of occurrence and completed operations coverage are ambiguous and create a genuine issue of material fact respecting coverage for the loss that forms the basis of this litigation.

Ambiguous policy provisions are generally construed against the insurer and in favor of coverage. La. C.C. art. 2056; *Edwards v. Daugherty*, 2003-2103 (La.10/1/04), 883 So.2d 932. Under this rule of strict construction, equivocal provisions seeking to narrow an insurer's obligation are strictly construed against the insurer. *Edwards*, p. 12, 883 So.2d at 941.

In its motion for summary judgment, the relator notes that its insurance policy provides:

> The Company will pay those sums that the insured becomes legally obligated to pay because of bodily injury or property damage

> to which this insurance applies.

Further the policy defines "property damage" as:

> (1) physical injury to or destruction of tangible property which occurs during [t]he policy period, including the loss of use thereof at any time resulting therefrom, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period.

It defines "occurrence" as:

> an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

The relator contends that because the plaintiff does not allege bodily or personal injury, or property damage, only faulty and/or defective construction, there is no "occurrence" to trigger coverage. The relator contends case law provides that damage caused by construction defects or faulty workmanship does not constitute an "accident" under the terms of a comprehensive general liability policy, that is, general liability policies are not performance bonds. *Swarts v. Woodlawn, Inc.,* 610 So.2d 888 (La. App. 1 Cir. 1992).

However, in *Korossy v. Sunrise Homes, Inc.,* 94-473 (La. App. 5 Cir.

3/15/95), 653 So.2d 1215, the plaintiffs' claims were based on excessive differential settlement of the foundations of their homes, which plaintiffs attributed to faulty construction and defective materials. The insurance policies in *Korossy*, as the policy in the instant case, defined "occurrence" as:

> an accident, including continuous or repeated exposure to conditions, which results in ... property damage neither expected nor intended from the standpoint of the insured ...

653 So.2d at 1224.

The *Korossy* court noted that in the *Western World v. Paradise Pools & Spas,* 93-723 (La.App. 5th Cir.2/23/94) case, the court found a similar definition of "occurrence" to be ambiguous.

In *Rando v. Top Notch Properties, L.L.C.*, 2003-1800 (La. App. 4 Cir. 6/2/04), 879 So.2d 821, we held:

> . . . that the clear weight of authority in more recent cases considers defects in construction that result in damage subsequent to completion to be accidents and occurrences when they manifest themselves. . .

Id., p. 18, 879 So.2d at 833.

The relator also invokes two policy exclusions. The "products exclusion", reads:

> This insurance does not apply: . . .
>
> (n) to property damage to the named insured's products arising out of such products or any part of such products;

The "work exclusion" of the relator's policy provides:

> (3) with respect to the completed operations hazard and with respect to any classifications stated in the policy or in the company's manual as "including completed operations", [this insurance does not apply] to property damage to work performed by the named insured arising out of such work or any portion thereof, or out of such materials, parts or equipment furnished in connection therewith.

The foregoing provisions create confusion. The products exclusion purports to deny coverage provided by the policy for completed operations, including "materials, parts or equipment furnished in connection" with the operations of the named insured. As the trial court noted, Megga paid an additional premium for just such coverage.

For the foregoing reasons, we find the policy provisions to be ambiguous, raising genuine issues of material fact that make summary judgment inappropriate. Accordingly, relator's application for supervisory writs is denied.

WRIT DENIED.