

Leaky Legislation

S.C. Supreme Court Ruling Exposes Builders to Added Liability

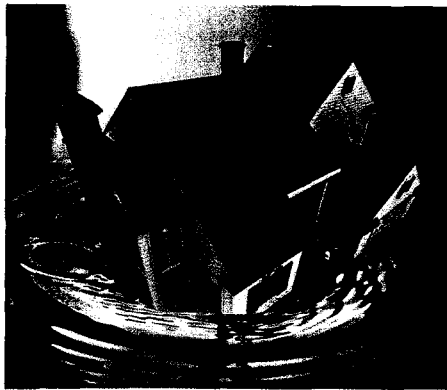
by Stacey Telford

The South Carolina Supreme Court has issued a ruling that negatively impacts home builders by increasing liability for faulty work completed by subcontractors. The Crossmann v. Harleysville ruling reversed the practice of insurance companies covering such damages on construction projects, leaving home builders unprotected.

The new ruling assumes that any damage caused by defects in building are either intentional or could have been foreseen. According to John Sadler of Sadler & Company, "Crossmann is a terrible decision that not only perverts the intent of the drafters of the General Liability policy, but also insults builders by saying that property damage that results from faulty construction is always expected or intended."

Check for Holes

Howard Cox of Palmetto Insurance explained that in 30 years of experience, no insurance company represented by his company has ever denied a claim on the basis of the logic of the Crossmann decision. Cox stated, "Bad work has never



been covered or paid for under General Liability insurance, but the resulting damage has." Builders are already concerned with the value of their policies and what they get out of it, he said, and the Crossmann decision takes away even more benefit from the policies.

Part of the problem with the benefits of an insurance policy for home builders is the prevalence of the CG2294 clause added by many insurers after 2004. This clause excludes defect claims and made builders liable for damage caused as a result of faulty work, prior to the Crossmann v. Harleysville ruling.

Builders are able to protect themselves, however, both from the version of CG2294

that completely excludes defect claims and from the recent S.C. Supreme Court ruling. Sadler explained, "There are some carriers that already have this different version of CG2294 in place, which is more favorable to resulting property damage from a defect. In addition, they do not intend on using Crossmann to deny an otherwise covered claim under most circumstances." Sadler noted that this more favorable version of the clause was not developed in response to the Crossmann v. Harleysville case, but existed prior. Builders should recognize that CG2294 also threatens liability coverage in a similar way to the Crossmann case, although the court ruling excludes claims based on the definition of occurrence. Builders should know what to look for and what to ask carriers to make sure they know exactly what their individual coverage includes and excludes.

Cox explained that the addition of the protective clause is not just for the benefit of the home builders. As it stands, the ruling will also negatively impact attorneys and homeowners. "If lawyers can only go after home builders," he said, "and the builder has no assets, the lawyer has no income and the homeowner isn't able to make the necessary repairs. It's a disastrous decision.

Do You Lead by Example?

by David Clark, membership committee chairman



Leading by example is a philosophy that I live by every day, and it's one that makes the Home Builders Association one of the most recognizable organizations in our state. We encourage our members to be active, to get involved, and to make a difference. Many of you turn out at meetings and events in support of the HBA and the industry. These are the members who really care about their future. We realize that many of our silent members care too, but now is the time to stop the silence and to let your voice be heard.

Strengthen Every HBA

One great event to turn your membership into an active one is

National Membership Day on May 24. We'll be hosting a statewide membership drive to recruit new members and to strengthen each and every local HBA. By increasing membership, we're ensuring that our industry pushes through the good times and the bad times. We also compete against HBAs nationwide to see which HBA can recruit the most new members. For all of you who get a kick out of competing, mark your calendar and plan to help your HBA be a winner.

Other than National Membership Day, there are tons of opportunities to recruit new members and lead by example. Calvin Snow of CVS Builders in Spartanburg showed up at the HBA of Greater Spartanburg's office one day last month to drop off five new member

applications and checks. He did this during his business day, and no, there wasn't a membership drive going on. Calvin only does business with HBA members, so he made sure some of his vendors joined the HBA. If this isn't an example of a leader, then I don't know what is.

You Have to Ask

Make the decision today to follow Calvin's lead. Help your HBA out on May 24 during National Membership Day or any day of the year. The next time you see a vendor, just ask them if they're a member of the HBA. If they say no, then tell them about the HBA and what they could gain by joining. Remember, the answer is always no until you ask. **SCBA**

In the past, when someone did something wrong, the wrong wasn't paid for, but the resulting damage was."

A Bad Decision; A Bad Policy

Frank Norris of Frank B. Norris & Co. feels that the decision by the S.C. Supreme Court was not just a bad decision, but that the insurance policy itself was bad. According to Norris, "Something is wrong when insurance companies cannot issue a liability policy that the builder can understand, much less the insurance agent. Something is wrong when multiple state supreme courts spend thousands of hours of legal time trying to interpret the CGL policy issued by the Insurance Service Office in 1986."

He added that insurance companies need to explain in layman terms exactly what a policy is intended to cover, taking away the need for a legislature to clarify policy coverage. "We represent one insurance company that has an endorsement that we like that clarifies coverage. Faulty work is not covered, but the resulting damage is covered. We wish other companies would take this same position and not hide behind the Crossmann decision when adjusting claims," Norris continued.

Norris further explained that in the Crossmann v. Harleysville case, there were points that should have been made by the S.C. Supreme Court that were not. He explained, "Our state supreme court should have warned insurance companies that Crossmann was an unusual case. The work was so shoddy that resulting damage was to be expected." Norris emphasized, however, that "it should not have applied across the board for other cases."

Plugging the Leak

Builders at the litigation table right now, as well as those who might be there in the future, are in immediate need of help so they are not held solely liable. The Home Builders Association of South Carolina is already working to give builders back the liability protection they need. According to Julian Barton, HBASC government affairs director, the association is focusing on three plans of action.

First, the S.C. Supreme Court will be reconsidering the case on May 23, 2011. Second, the association is working on the long-term problem of clarifying insurance policies in order to clearly identify what is and what is not covered. The eventual

goal is to create a specific endorsement that will provide the information builders need to understand their policies and what protection they have. Third, HBASC worked hard on the legislative end to pass a bill through the S.C. Senate on March 30, 2011 to reverse the Crossmann v. Harleysville decision. Senate Bill 431 once again helps builders be covered against the damage, not the faulty work itself, caused by a subcontractor.

The bill isn't an attempt to try to put the insurance companies on the hook for

everything. Barton explained, "We aren't trying to say that a subcontractor can do whatever and the insurance company should have to pay for it. However, builders cannot control all of the work done by subcontractors, and the insurance company should help cover any resulting damage." Now that S.431 has passed through the S.C. Senate, the effort will continue in the S.C. House. In addition, HBASC will continue to work toward the endorsement builders need in their policies to ensure clarity in coverage. **SCBJ**



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