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Alert

Bill to Require Inclusion of "Faulty Workmanship" of Contractor in Definition of "Occurrence" in Commercial Liability Policies Introduced in NJ Assembly

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On November 25, 2013, Assemblyman Gary S. Schaer introduced a Bill, ASSEMBLY NO. 4510, to the Financial Institutions and Insurance Committee of the Assembly that, if passed, will require insurers to define the term "occurrence" in commercial liability insurance policies issued to contractors to include "property damage or bodily injury resulting from faulty workmanship."

According to the interpretative Statement that accompanied the Bill, it is intended "to reduce confusion in industry practices by resolving coverage issues arising from the holdings in various court decisions" by requiring that the definition of occurrence address "both accidents and faulty workmanship…." The Bill specifically states that it is not intended to restrict or limit the number or types of exclusions that can be included in a commercial liability insurance policy.

The interpretive Statement identifies certain judicial decisions from courts in New Jersey and elsewhere that have, according to Assemblyman Schaer, "varied in their holdings as to whether damage from faulty workmanship is accidental in nature and therefore within the definition of an occurrence…." Two of those decisions, Fireman's Ins. Co. of Newark v. National Union Fire Ins. Co., 387 N.J. Super. 434 (App. Div. 2006), and Pennsylvania National Mut. Cas. Ins. Co. v. Parkshore Development Corp., 403 Fed. Appx. 770 (3rd Cir. 2010), applied New Jersey law and have been relied on by other courts to hold that claims of faulty workmanship against a contractor do not satisfy the Insuring Agreement requirement of a commercial liability policy that there be "property damage" caused by an "occurrence" in order for the policy to apply. We believe the clear intent of the Bill is to effect a legislative change in this law.

The Bill will first be considered by the Financial Institutions and Insurance Committee in a public meeting. If it is released by the Committee, it will then be addressed and voted on by the full Assembly. If the Bill passes the Assembly, it will then be referred to the Senate for consideration and vote. If the Bill passes both the Assembly and the Senate in identical form, it will be sent to the

Governor for signature. The Bill will become law if the Governor signs it or forty-five (45) days after it is presented to the Governor if the Governor takes no action on it. The effective date of the Bill, if passed into law, would be the ninetieth (90^{th}) day following its enactment.

Our office will monitor the progress of this Bill and periodically report on its progress in future e-alerts.

If you have any questions about the Bill or the issues that it addresses, please feel free to contact Kevin E. Wolff (973-631-6007, kwolff@cmg.law) or Julia C. Talarick (973-631-6041, jtalarick@cmg.law) of our office.