

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL**

CERTAIN UNDERWRITERS AT LLOYD’S, LONDON,	:	SEPTEMBER TERM, 2009
	:	
Plaintiff,	:	NO. 01263
	:	
v.	:	COMMERCE PROGRAM
	:	
ANTON BERZIN, ALLSTATE INSURANCE COMPANY a/s/o WILLIAM AND NIKKOL BLAGMON, HAYDEN CONSTRUCTION CO. d/b/a ROCCO & SONS, and COLONY INSURANCE,	:	
	:	
Defendants.	:	

**OPINION**

Defendant Hayden Construction Co. d/b/a Rocco & Sons (“Rocco”) has appealed from this court’s Order dated May 19, 2010. In the May 19<sup>th</sup> Order, the court granted plaintiff’s (“Lloyd’s”) Motion for Summary Judgment and held that Lloyd’s has no duty to defend or indemnify Rocco under a certain Commercial General Liability Policy (the “Policy”).<sup>1</sup>

William and Nikkol Blagmon contracted with Rocco to remove and replace the roof on their home (the “Roof Work”). Rocco subcontracted with defendant Anton Berzin to perform the Roof Work. Berzin was covered under the Policy issued by Lloyd’s. Rocco was added as an Additional Insured under the Policy in connection with the Roof Work.

After the old roof was removed and before the new roof was installed, Berzin/Rocco put up a temporary covering, *i.e.*, a tarp. The tarp failed to keep out the rain and, as a result, interior portions of the Blagmons’ home suffered water damage. The Blagmons’ property insurance carrier, Allstate Insurance Co., paid the Blagmons’ damage claim and filed a subrogation action against Berzin and Rocco alleging that their negligence, breach of contract, and breach of

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<sup>1</sup> The Policy’s number is 0993ZX/ATR049.

warranty caused the interior water damage.<sup>2</sup> Berzin/Rocco sought defense and indemnification from Lloyd's under the Policy. Lloyd's filed this declaratory judgment action seeking a declaration that it has no duty to defend or indemnify Berzin and Rocco in the Underlying Action.

The Policy provides coverage for an "occurrence," which is defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."<sup>3</sup> In Millers Capital Insurance Co. v. Gambone Brothers Development Co., Inc., the Superior Court held that interior water damage resulting from a contractor's faulty workmanship is not an "accident" or an "occurrence" under a commercial general liability policy, such as the Policy here.<sup>4</sup> The Superior Court held that

[T]he terms "occurrence" and "accident" in the CGL policy at issue contemplated a degree of fortuity that does not accompany faulty workmanship. . . . [N]atural and foreseeable acts, such as rainfall, which tend to exacerbate the damage, effect, or consequences caused *ab initio* by faulty workmanship also cannot be considered sufficiently fortuitous to constitute an "occurrence" or "accident" for purposes of an occurrence based CGL policy. . . . To reiterate, damage caused by rainfall that seeps through faulty home exterior work to damage the interior of a home is not a fortuitous event that would trigger coverage.<sup>5</sup>

Applying the Millers' rationale, this court holds that Berzin/Rocco's improper installation of a tarp as a temporary roof on the Blagmons' home constitutes faulty workmanship and not a covered accident or occurrence under the Policy. As a result, Lloyd's has no duty to defend or indemnify Berzin and Rocco in the Underlying Action.

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<sup>2</sup> Blagmon v. Hayden Construction Co., Philadelphia Court of Common Pleas, June Term, 2009, No. 01363 (the "Underlying Action").

<sup>3</sup> Policy, p. 12.

<sup>4</sup> 941 A.2d 706 (Pa. Super. 2007).

<sup>5</sup> *Id.*, 941 A.2d at 713-4.

For all the foregoing reasons, the court respectfully requests that its May 19<sup>th</sup> Order be affirmed on appeal.

Dated: June 28, 2010

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**MARK I. BERNSTEIN, J.**