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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Liberty Mutual Must Cover Faulty-Work Defense, Judge Rules

By **Kat Sieniuc**

Law360, New York (November 1, 2016, 10:15 PM EDT) -- An Iowa federal judge on Tuesday ruled that Liberty Mutual Insurance must cover window and door maker Pella Corp.'s defense costs in a representative sample of product liability suits against it, saying faulty workmanship that gives rise to water damage is indeed a covered "occurrence" under state law.

The coverage dispute hinged on whether and to what extent Pella's commercial general liability policies with Liberty Mutual covered underlying lawsuits that alleged damage caused to third-party property by Pella's supposed negligence in designing, manufacturing or installing its products.

Mostly granting Pella's bid for summary judgment and denying Liberty Mutual's, U.S. District Judge James E. Gritzner found most of those claims were potentially covered under one or more policy Pella held between 2000 and 2008 and indeed fell within the scope of the insurer's obligation to cover Pella's defense costs. He concluded that "under Iowa law, claims of defective workmanship manifesting in water intrusion that damages property other than the work itself include the allegations of an accident — namely, unexpected and unintended water intrusion — and thus can support the finding of a [covered] occurrence," he said.

This can even be the case when the claims are based in negligence and the property damage is allegedly foreseeable, the court ruled.

In June 2011, Pella sued Liberty in Iowa federal court, seeking a determination that more than 100 claims for property damage resulting from the company's allegedly defective windows and doors fall within the scope of a series of commercial general liability policies it held with the insurer from September 2000 to September 2008.

The first phase of the coverage litigation is focused on a small sample of the underlying claims. Pella argued that all the sample claims constitute accidental occurrences under the Liberty Mutual policies, asserting that Iowa follows the rule adopted by a majority of jurisdictions nationwide that third-party property damage tied to faulty workmanship can be an occurrence.

An attorney representing Liberty did not immediately return a request for comment on Tuesday.

Liberty Mutual is represented by Jeffrey C. Gerish, Charles W. Browning and Maryanne B. Foster of Plunkett Cooney and Robert V.P. Waterman Jr. of Lane & Waterman LLP.

Pella is represented by Keith McKenna, Robin L. Cohen and Marc T. Ladd of McKool Smith PC and Richard W. Lozier Jr. of Belin McCormick PC.

The case is Pella Corp. et al. v. Liberty Mutual Insurance Co., case number 4:11-cv-00273, in the U.S. District Court for the Southern District of Iowa, Central Division.

--Additional reporting by Steven Trader and Jeff Sistrunk. Editing by Mark Lebetkin.

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