

## Massachusetts Federal Court Rejects *Adria Towers*, Finds Construction Defects Not an “Occurrence”

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*Insurance Coverage and Bad Faith Alert*

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In an important ruling for insurers, U.S. District Court Judge Patti Saris found that Massachusetts does not follow the position taken in *Cypress Point Condo Association v. Adria Towers, LLC*, 226 N.J. 403, 418 (2016), *i.e.*, it does not hold that “faulty workmanship claims [should be recognized] as ... an ‘occurrence,’ thus triggering coverage, ‘so long as the allegedly defective work [was] performed by a subcontractor rather than the policyholder itself.”[1]

Instead, Judge Saris reaffirmed earlier Massachusetts authority holding faulty work is not an “occurrence” for coverage purposes.[2] and found this authority applied whether or not the work in question was subcontracted.

In the alternative, Judge Saris found, even if a contractor’s faulty work could be deemed an an “occurrence,” such work did not constitute covered “property damage,” because none of the alleged damage was “outside the scope of the work that Tocci was contractually required to fulfill as general contractor.”[3]

In reaching her conclusion, Judge Saris accepted the insurer’s argument that work by one subcontractor, damaging the work of another subcontractor, is not “property damage” as to a general contractor, because the general contractor’s “work” encompasses the entire project.[4]

She concluded: “Given the court’s determination that the allegations do not trigger coverage under the Policy, [there is no] need to analyze whether the business risk exclusions would also bar coverage as an alternative holding .... [However,] there is strong support for Admiral’s position in the alternative that the business risk exclusions would [bar] coverage in the underlying action.”[5]

The case is *Admiral Insurance Company v. Tocci Building Corporation, et al.*, Civ. No. 21-10388-PBS (U.S. District Court, District of Massachusetts, March 28, 2022). A copy of the decision is available [here](#).

An earlier decision by Judge Saris, denying Tocci’s motion to dismiss or transfer, is available [here](#).

Eric Hermanson and Austin D. Moody, of White and Williams, filed suit and successfully argued on behalf of Admiral. Copies of the relevant motion papers are available [here](#).

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[1] See Opin., *Admiral Ins. Co. v. Tocci Building Corp.*, et al., Civ. No. 21-10388-PBS (March 28, 2022). Links to the opinion, and to the parties’ briefing on the issues, can be found at the end of this report.

[2] Opin., pp. 20-21 (*citing Am. Home Assur. Co. v. AGM Marine Contr.*, 379 F.Supp.2d 134, 136 (D. Mass. 2005); *Davenport v. USF&G*, 2002 WL 31549391 (Mass. App. 2002)).

[3] Opin., pp. 18-19 (*citing Friel Lux. Home Constr. v. ProBuilders Spec. Ins. Co.*, 2009 WL 5227893 (D. Mass. 2009)).

[4] Opin., p. 21 (*citing Mello v. Acadia Ins. Co.*, 2007 WL 2908267 at \*5 (Mass. App. 2007)).

[5] Opin., pp. 22-23 (*citing Friel, supra*).

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