

## CONTRACTORS WARRANTY ENDORSEMENT REQUIRES ACTION - OR INSURANCE MAY BE DENIED

The California Court of Appeal recently held that when insurance documents include a contractors warranty endorsement, unless the insured obtains certain required documents or agreements from others, the insured will have not fulfilled its insurance obligation and therefore will not have insurance coverage.

In *North American Capacity Insurance Company v. Claremont Liability Company*, North American Capacity Insurance Company (NAC) and Claremont Liability Company (Claremont) insured JD Group, Inc. (JDG), a general contractor that built a large home in Los Angeles beginning in 1998.

The Claremont commercial general liability policy (the primary policy) contained a contractors warranty endorsement requiring the insured to obtain from every independent contractor (1) a written agreement holding the insured harmless from all liabilities incurred by the independent contractor, and (2) certificates of insurance indicating that the independent contractor will maintain coverage similar to that provided by Claremont.

After JDG completed the home in April 2001, the property owner sued JDG for breach of contract, alleging flaws and defects in the house. JDG filed cross-complaints against various subcontractors. During mediation, the property owner settled with JDG for \$2.2 million. NAC paid \$800,000 and Claremont paid \$300,000. NAC subsequently sued Claremont alleging that Claremont did not pay its equitable share of the settlement.

During the NAC and Claremont trial, evidence showed that JDG complied with the contractors warranty endorsement with respect to only two of its subcontractors. The court, agreeing with the trial court, ruled that compliance with the endorsement was a pre-condition for coverage.

**Why is this important, and what should be done?** The take-away from this new case is that all

companies that have commercial general liability insurance or umbrella insurance should review their insuring documents to determine whether their insurer has included a contractors warranty endorsement or its equivalent. If this endorsement is, in fact, included, an insured company should be sure to do what is required by its policy provisions so that in the event a claim is filed, coverage will not be denied when a company needs it the most.

[Click **here** to access the court's opinion.]

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If you have any questions regarding this or any other construction or real estate related matter, please contact Sean Cottle or one of our firm's real estate professionals.

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