

## **Larson•King Client Alert: New Guidance on Insurance Coverage Allocation from the Minnesota Supreme Court**

The Minnesota Supreme Court recently handed down its decision in *Wooddale Builders, Inc. v. Maryland Casualty Co.*, which addresses issues relating to allocation of insurance coverage for indemnity and defense costs arising from defective construction/water intrusion claims.

In late 2000, Wooddale Builders, Inc., a general contractor, began to receive claims of defective construction and/or faulty workmanship from the owners of numerous stucco homes it had built from 1991 to 1999. The homeowners claimed that defective construction and/or faulty workmanship by Wooddale resulted in water intrusion and mold growth problems in their homes. The sources of water intrusion apparently existed since construction of the homes. The dispute over coverage for these claims ultimately implicated five of Wooddale's insurers who were on the risk between November 1990 and November 2002.

There were two issues before the Minnesota Supreme Court. First, how is a court to allocate damages for water intrusion claims – both among the individual insurers, and among the insurers and the insured? The *Wooddale* court set forth a simple equation:  $A/B \times C = D$ , where A is each insurer's time on the risk, B is the total period over which liability is allocated, C is the total damages to be allocated, and D is the damages allocated to each individual insurer.

In discussing these factors, the court resolved an important question: if a water intrusion claim is allocated among several consecutive policies, what is the end date for the allocation period – the date the builder receives notice of the claim or the date of remediation of the damage? The court decided that **the end date is the last day of the policy period in which notice of the claim is received.**

The court also remanded the case for a further determination on whether coverage for water intrusion claims was available to Wooddale after November 2002. To the extent coverage was not available, the court said, liability could not be allocated to the insured.

The second issue is whether defense costs should be allocated equally among the consecutive triggered policies or in the same manner as indemnity costs (usually pro rata by time on the risk). The court upheld the rule used by Minnesota courts in the past and concluded that **defense costs should be allocated equally among all insurers** whose policies are triggered.

Interestingly, the court did not directly address the single-trigger versus multiple-trigger issue – *i.e.*, whether defective construction/water intrusion claims trigger only one policy or trigger multiple consecutive policies. The parties in the case had stipulated to a multiple trigger, so the issue was not before the court. But in a footnote, the *Wooddale* court hinted that **defective construction claims might fall into the single-trigger rule**, in that they arise from a discrete and identifiable event, *i.e.*, defective construction.

*For further information on the Wooddale decision or counseling concerning its import, please contact Doug Skor, John Bjorkman, Paula Vraa or Patrick Boley at 651-312-6500.*

The content of this publication is intended for general information purposes only and should not be construed as legal advice or legal opinion on any specific facts or circumstances. You are urged to consult legal counsel concerning your situation and any specific legal questions you may have.