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Order on Third-Party National Fire Insurance
Company of Hartford's Motion for Summary
Judgment (GEORGIA STATE FINANCING
AND INVESTMENT COMMISSION)

Elizabeth E. Long
Superior Court of Fulton County

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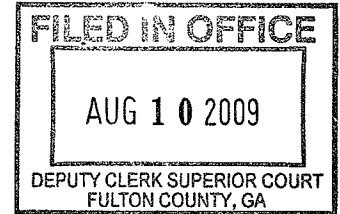
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**IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA**



**GEORGIA STATE FINANCING AND
INVESTMENT COMMISSION,**

Plaintiff,

v.

**LPS CONSTRUCTION CO., INC., WALLACE
H. WIGGINS, JR., PERKINS & WILL, INC.,
FIREMAN'S FUND INSURANCE CO., and XL
SPECIALTY INSURANCE CO.**

Defendants,

and

**LPS Construction Co., Inc.
Third Party Plaintiff**

v.

**ZURICH AMERICAN INSURANCE CO. and
NATIONAL FIRE INSURANCE COMPANY
OF HARTFORD**

Third-Party Defendants,

and

**LPS CONSTRUCTION CO., INC.,
FIREMAN'S FUND INSURANCE COMPANY.
and
PERKINS & WILL, INC.,
Third-Party Plaintiffs**

v.

**SOUTHWESTERN COMMUNICATIONS,
INC., SOUTHEAST ROOFING SOLUTIONS,
INC., MOCK PLUMBING AND
MECHANICAL, INC., H. A. SACK CO., INC.
d/b/a THE SACK COMPANY, BONITZ OF
GEORGIA, INC., RIGHTWAY
DRYWALL, INC., OLD CAPITOL GLASS
COMPANY, INC., MAY SPECIALTY
FABRICATORS, INC., LARRY GUNN,
CHARLIE JOHNSON, CENTRAL FENCE
COMPANY, INC., SPRINKLER
CONTRACTORS, INC.,
and H. A. SACK CO., INC. d/b/a THE SACK**

**CIVIL ACTION FILE NO.
2007CV128025**

COMPANY

Third-Party Defendants,

and

**SOUTH WESTERN COMMUNICATIONS,
INC.,**

Fourth-Party Plaintiff,

v.

**SIMPLEXGRINNELL, LP, f/k/a SIMPLEX
TIME RECORDER CO.,**

Fourth-Party Defendant

and

**H. A. SACK CO., INC. d/b/a THE SACK
COMPANY**

Fourth-Party Plaintiff,

v.

**CONTINENTAL LIGHTNING
PROTECTION, INC. AND TERRY L.
DAGENHART**

Fourth-Party Defendants.

**ORDER ON THIRD-PARTY DEFENDANT NATIONAL FIRE INSURANCE COMPANY OF
HARTFORD'S MOTION FOR SUMMARY JUDGMENT**

On July 10, 2009, Counsel appeared before this Court to present oral argument on Third-Party Defendant National Fire Insurance Company of Hartford's Motion for Summary Judgment. After hearing the arguments made by counsel and reviewing the briefs submitted on the motions and the record in the case, the Court finds as follows:

I. Facts

This case arises out of the construction of a 192-bed state forensics hospital in Milledgeville, Georgia (“the Project”). The Project was designed for the state Department of Human Resources to be used to house detainees awaiting adjudication as to their competence to stand trial. Plaintiff, Georgia State Financing and Investment Commission (“GSFIC”), is the state agency that procures projects for use by other state agencies. Defendant LPS Construction Company, Inc. (“LPS”) was hired by GSFIC to construct the Project, and served as the general contractor. Defendant Wallace H. Wiggins (“Wiggins”) is the CEO of LPS. National Fire Insurance Company of Hartford (“National Fire”) insured LPS for general liability from November 1, 2000 – November 1, 2001. Defendant Perkins & Will (“P&W”) was hired by GSFIC as the Project architect, and was in charge of contract administration. GSFIC has filed suit complaining of extensive construction defects throughout the Project. National Fire has filed a motion for summary judgment contesting its duty to defend and indemnify LPS for the claims asserted against LPS in this case.

II. Standard

A court should grant a motion for summary judgment pursuant to O.C.G.A. § 9-11-56 when the moving party shows that no genuine issue of material fact remains to be tried and that the undisputed facts, viewed in the light most favorable to the non-movant, warrant summary judgment as a matter of law. Lau’s Corp., Inc. v. Haskins, 261 Ga. 491, 491 (1991).

III. National Fire’s Motion for Summary Judgment

LPS filed a third-party complaint against National Fire Insurance Company of Hartford f/k/a Transcontinental Insurance Company (“National Fire”) which issued a general liability insurance policy listing LPS as the named insured from November 1, 2000 through November 1,

2001 (the “Policy”). LPS alleges that National Fire must provide it with a defense and indemnity in connection with GSFIC’s claims against LPS in this case.

National Fire filed a motion for summary judgment on several different grounds. First, the Policy requires LPS to notify National Fire “as soon as practicable” of an “occurrence . . . that may result in a claim.” National Fire contends that LPS knew of claims of alleged defects in the Project in 2004 and 2005, but did not notify National Fire until April, 2008. National Fire argues that this delay is unreasonable and warrants summary judgment in its favor.

In opposition, LPS argues that it was only after it received the GSFIC complaint and after discovery revealed that GSFIC was claiming property damage that occurred during the Policy period that it had reason to report this claim and lawsuit to National Fire. LPS contends that before the complaint was filed there were no claims of negligence asserted by GSFIC, and even after the complaint it was not until sometime during discovery that LPS learned that there were claims arising in the Policy period.

Clearly a question, or questions, of fact have been raised which must be considered by a jury. Norfolk & Dedham Mut. Fire Ins. Co. v. Cumbaa, 128 GA.App. 196 (1973).

Second, National Fire contends that no “property damage” occurred during the Policy period, and therefore, National Fire has no duty to defend or indemnify LPS as a matter of law. It points to the complaint that alleges that numerous latent defects have been discovered after May 7, 2003, well after the Policy expired.

LPS argues that GSFIC has complained about defects and damages attributable to the structural steel work and roofing work on the Project, which work was performed before November 1, 2001. If a jury were to find that defective work occurred during the Policy period, it could reasonably infer that damages to other property also occurred during the Policy period.

Again, there are questions of fact for a jury to decide.

Third, National Fire argues that under the terms of the Policy it provides coverage only for sums that LPS becomes “legally obligated to pay as damages” because of “property damage” caused by an “occurrence.” “Occurrence” is defined as “an accident” under the Policy and National Fire contends that the work done by LPS or its subcontractors was intentional; that is, they intended to perform the work and therefore the work cannot be an accident.

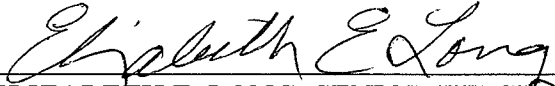
In the Georgia case of Sawhorse, Inc. v. Southern Guaranty Ins. Co., 269 Ga. 493 (2004), the insurer made a similar argument which the Court of Appeals rejected. This Court will follow the ruling of the Court of Appeals.

Finally, National Fire argues that in order for the Policy to apply in this case, the faulty workmanship must cause damage to other property, not just the “work” itself. National Fire relies on Custom Planning & Dev. v. American Nat’l. Fire Ins. Co., 270 Ga. App. 8 (2004). Although Custom Planning does indicate that there must be damage to other property, it does not deal with a situation such as this one where the damage allegedly occurred to the work of other subcontractors.

Although there does not appear to be a Georgia case directly on point, exclusion j. (8) of the Policy which excludes “property damage” to “[t]hat particular part of any property that must be restored, repaired or replaced because ‘your work’ was incorrectly performed on it” is instructive. The only reasonable interpretation is that the damage to the work of the subcontractor whose faulty work caused damage will not be covered, but the damage caused to other work is not excluded. Logically, it would follow that the other property might be the work of other subcontractors as well as the work of an unrelated third party.

National Fire is not entitled to summary judgment. The motion for summary judgment is hereby **DENIED**.

SO ORDERED this 10th day of August, 2009.


ELIZABETH E. LONG, SENIOR JUDGE
FULTON COUNTY SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

Copies to:

Georgia State Financing and Investment Commission

George C. Reid, Esq.
georgereid@mindspring.com
Building One—Suite 200
4200 Northside Parkway
Atlanta, GA 303027

Teri D. Fields, Esq.
tfields@law.ga.gov
Assistant Attorney General
State Law Department
40 Capital Square, S.W.
Atlanta, GA 30334

David R. Cook, Jr., Esq.
cook@ahclaw.com
Autry, Horton & Cole, LLP
2100 East Exchange Place
Suite 210
Tucker, GA 30084
404.365.5694 ext. 3335

LPS Construction Co., Inc.,

John C. McManus, Esq.
jcm@jcmpc.com
George Warlick, Esq.
g.warlick@jcmpc.com
Alex Yusupov, Esq.
alex@jcmpc.com
McManus & Warlick, LLP
5901-A Peachtree Dunwoody Road
Suite 510
Atlanta, GA 303028
678.397.1010

Wallace H. Wiggins, Jr.,

John C. McManus, Esq.
jcm@jcmpc.com
George Warlick, Esq.
g.warlick@jcmpc.com
Alex Yusupov, Esq.
alex@jcmpc.com
McManus & Warlick, LLP
5901-A Peachtree Dunwoody Road
Suite 510
Atlanta, GA 303028
678.397.1010

Perkins & Will, Inc.,

William Wildman, Esq.
bill.wildman@sablaw.com
Kent W. Collier, Esq.
kent.collier@sablaw.com
Sutherland
999 Peachtree Street, NE
Atlanta, GA 30309-3996

American Motorists Insurance Co.,

Fireman's Fund Insurance Co.,

John V. Burch, Esq.
jvb@boviskyle.com
Marc H. Bardack, Esq.
mhb@boviskyle.com
Bovis, Kyle & Burch, LLC
200 Ashford Center North

Suite 500
Atlanta, GA 30338

XL Specialty Insurance Co.,
DeWitte Thompson, Esq.
dthompson@tshlawyers.com
Robert Steinberg, Esq.
rsteinberg@tshlawyers.com
Thompson Slagle & Hannan, LLC
1200 Findley Road, Suite 250
Duluth, GA 30097-1411

Southwestern Communications Inc. (Third Party Defendant to Complaint filed by Third Party Plaintiff Perkins & Will, Inc., and Fireman's Fund Ins. Co. & LPS Construction Co., Inc.)
G. Lee Welborn, Esq.
welborn@downeycleveland.com
Downey & Cleveland
288 Washington Avenue
Marietta, Georgia 30060

Southeast Roofing Solutions (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.)
Michael J. Classens, Esq.
michael@ecbcpc.com
Edenfield, Cox, Bruce & Classens, P.C.
115 Savannah Avenue
Statesboro, GA 30459

Mock Plumbing and Mechanical Inc.,
Edward H. Lindsey Jr., Esq.
elindsey@gmlj.com
David M. Abercrombie, Esq.
dabercrombie@gmlj.com
Goodman McGuffey Lindsey & Johnson, LLP
3340 Peachtree Road, NE
Suite 2100
Atlanta, GA 30326

H.A. Sack Co., Inc. (Third Party Defendant to Complaint filed by Third Party Fireman's Fund

Ins. Co. & LPS Construction Co., Inc.)
Ronald J. Garber, Esq.
rgarber@shapirofussell.com
Shapiro, Russell, Wedge & Martin, LLP
One Midtown Plaza, Suite 1200
1360 Peachtree Street, NE
Atlanta, GA 30309-3214

Kenneth Sisco, Esq.
ksisco@hplegal.com
Hawkins & Parnell LLP
3030 Peachtree Street, NE
400 SunTrust Plaza
Atlanta, GA 30308

Bonitz of Georgia, Inc. (Third Party
Defendant to Complaint filed by Third Party
Fireman's Fund Ins. Co. & LPS Construction
Co., Inc.)

Alan S. Lowe, Esq.
alowe@savlawgroup.com
Ellen Schoolar, Esq.
ellen@savlawgroup.com
Alan S. Lowe & Associates P.C.
311 W. Broughton Street
Savannah, GA 31401

Rightway Drywall, Inc. (Third Party
Defendant to Complaint filed by Third Party
Fireman's Fund Ins. Co. & LPS Construction
Co., Inc.)

James T. Budd
jbudd@m-mlegal.com
Mabry & McClelland, LLP
2200 Century Parkway
Tenth Floor
Atlanta, GA 30345

Old Capitol Glass Company, Inc. (Third
Party Defendant to Complaint filed by Third
Party Fireman's Fund Ins. Co. & LPS
Construction Co., Inc.)

Stacey K. Hydrick, Esq.
Hydrick Law LLC
2408 Mt. Vernon Road

Atlanta, Georgia 30338

May Specialty Fabricators, Inc. (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.)

Jerald R. Hanks, Esq.
jrhanks@hanksbrookes.com
Hanks & Brookes, LLC
The Peachtree
1355 Peachtree Street, NE
Suite 1900
Atlanta, GA 30309

Larry Gunn, (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.)

P.O. Box 54
Nunex, GA 30448

Charlie Johnson (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.)

213 Forest Avenue
Soperton, GA 30457

Central Fence Co., Inc. (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.)

Kirk Susong, Esq.
ksusong@gadisputes.com
Robert P. Marcovitch, Esq.
bmarcovitch@gadisputes.com
Gaslowitz Frankel, LLC
4500 SunTrust Plaza
3030 Peachtree Street, NE
Atlanta, GA 30308-3243

Sprinkler Contractors, Inc. (Third Party Defendant to Complaint filed by Third Party Fireman's Fund Ins. Co. & LPS Construction Co., Inc.)

Melinda Moseley
Melinda.moseley@nelsonmullins.com
Nelson Mullins Riley & Scarborough, LLP

201 17th Street, N.W.
Suite 1700
Atlanta, GA 30363

Thyssenkrupp Elevator Corp. (Third Party
Defendant to Complaint filed by Third Party
Fireman's Fund Ins. Co. & LPS Construction
Co., Inc.)

Terry L. Dagenhard
19412 Makayla Lane
Cornelius NC 28031-6533

Paul Crabtree
Continental Lightning Protection, Inc.
2912 Millwood Lane, NW
Lilburn, GA 30047

Zurich American Ins. Co. (Fourth Party
Defendant)

Frederick W. Stearns, Esq.
fred.stearns@swiftcurrie.com
Swift Currie McGhee & Hiers LLP
1355 Peachtree Street NE
Suite 300
Atlanta, GA 30309-3238

**National Fire Insurance Company of
Hartford f/k/a Transcontinental Ins. Co.,
Continental Casualty Ins. Co., and Valley
Forge Ins. Co.**

Michael J. Athans, Esq.
mathans@fieldshowells.com
Matthew A. Barrett, Esq.
mbarrett@fieldshowell.com
Fields Howell, Athans & Mclaughlin LLP
191 Peachtree Street, NE
Suite 4600
Atlanta, GA 30303-1740

Simplex Grinnell LP (Fourth Party
Defendants)

Raymond L. Deluca, Esq.
Wendy F. Klein Keane, Esq.
kleinkew@pepperlaw.com
Pepper Hamilton LLP

3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103

C. Bradford Marsh, Esq.
bradford.marsh@swiftcurrie.com
Swift, Currie, McGhee & Hiers LLP
1355 Peachtree Street NE
Suite 300
Atlanta, GA 30309