

“Your work” exclusion does not bar coverage for claim against concrete flooring subcontractor for damage to other flooring layers

A subcontractor’s Commercial General Liability insurance policy provided coverage for damage to carpets and tiles laid on top of a defective subfloor, despite an exclusion for the cost to repair “your work,” the Massachusetts Appeals Court has determined.

In *All America Ins. Co. v. Lampasona Concrete Corp.*, 95 Mass. App. Ct. 79 (2019), the Appeals Court reversed a lower court decision granting summary judgment to All America in the insurer’s declaratory judgment action. All America had sought a declaration that Lampasona’s CGL policy excluded coverage for damage to a vapor barrier and carpet tiles resulting from its negligent installation of a concrete subfloor at Beverly Hospital, and that it had no duty to defend or indemnify its insured from claims by the hospital or general contractor.

The damaged floor had three layers: a vapor barrier, Lampasona’s concrete slab, and a layer of either tile or carpet. Lampasona installed only the concrete slab, but allegedly punctured the vapor barrier. Due to the fiber content of the concrete, moisture allegedly wicked through and damaged the upper layer of flooring.

Beverly Hospital’s owner had sought the costs to repair and remediate the flooring issues from the general contractor and subcontractors. All America invoked an exclusion providing that its insurance does not apply to “[t]hat particular part of any property that must be restored, repaired or replaced because ‘your work’ was incorrectly performed on it.” Previous cases have held that this exclusion operates to exclude coverage for a contractor’s faulty workmanship, but only with respect to “that particular part of the property subject to the faulty workmanship.” For example, in a key 1985 case, the Appeals Court held that where a defective foundation caused the house to sag, the damage to the rest of the house was covered, while only the cost to repair the foundation was excluded.

The lower court nevertheless had determined that the All America policy excluded coverage because Lampasona’s work on the concrete subfloor played an “integral and inseparable part ... in the installation of a flooring system that was comprised of multiple layers, but constituted one completed product: interior flooring for the first floor of [the hospital].” The Appeals Court disagreed, noting that Lampasona was hired to install only one discrete portion of the flooring system.

The decision that the subfloor was distinct from the flooring “system” overall, such that Lampasona’s work had damaged something separate from its own work, was distinguishable from a similar case in which a subcontractor’s faulty rebar installation rendered a concrete wall unstable. In that case, the Appeals Court noted, the missing rebar “did not cause, but itself was, the damage.” See *Bond Bros., Inc. v. Robinson*, 393 Mass. 546 (1984).