

# Update on the Law

## INSURANCE - JUNE 2009

### COVERAGE MUST BE PROVIDED WHERE WIND DAMAGE TO ONE FLOOR REQUIRES RELATED REPAIRS TO UNDAMAGED FLOORS OF BUILDING

In **DEB Associates v. Greater New York Mutual Insurance Company**, (*NJ App. Div. - approved for publication*) the court held there is insurance coverage for the costs to update and correct construction code deficiencies on floors of a building arising from wind damage to another floor. The seventh floor of the building had been damaged from a windstorm. When the code officials inspected the damaged floor, they discovered that the walls had been secured to the concrete flooring with mortar, but not steel angle irons, as is presently required under the building code. There was no evidence that the failure to use angle irons violated the code when the building was constructed.

The trial court found that the evidence was undisputed that the “repairs to the other floors would not have been required if the seventh floor wall had not collapsed and also that the angle irons were required [to be installed on all floors] as a consequence of the December 2003 partial collapse.” Although the parties agreed that the repair of the seventh floor required GNY to pay to reconstruct that floor in accordance with the current code, they disagreed as to coverage for repairs to the separate, undamaged portions of the building.

After reviewing case law from other jurisdictions, and restating that coverage sections of an insurance policy are to be liberally construed in favor of coverage; that exclusions are to be narrowly construed, and that ambiguities are to be construed against the insurer, the court concluded that since there was a causal connection between the collapse of the seventh floor wall and the requirement to bring the other floors in compliance with the existing building code, there is coverage for the corrective work. The court specifically stated that the decision was limited to the facts of the case, and that it may be different if the code problems were unrelated to the collapse of the wall. Since, however, the work to install angle irons to the remainder of the building was directly related to the cause of the initial collapse, involving the same structural part of the building and the same building code provisions. The court also stated that while the policy specifically excluded pre-existing code violations, the policy did not specifically exclude situations where a covered structure is grandfathered under the code but lost that status due to the occurrence. The court concluded that if the insurer had intended to exclude coverage in these situations, it could have written the policy to specifically exclude the coverage.

**DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis & Lehrer, PC ( [www.dbnjlaw.com](http://www.dbnjlaw.com) ) is a full service law firm in New Jersey which provides a broad range of legal services, including the representation of insurance companies in coverage matters. For additional information about the matters in this bulletin or in the firm's Insurance Coverage Practice, please contact Steven A. Kunzman, Esq. [skunzman@newjerseylaw.net](mailto:skunzman@newjerseylaw.net)**

*The information contained in this bulletin is intended solely for informational purposes; it is a marketing publication of DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis & Lehrer, P.C.. This publication is intended to alert recipients of developments in the law and is not intended to provide legal counsel, advice or opinion on any specific facts or circumstances. The contents are intended as general information only. You are urged to consult your own attorney concerning your particular situation and any specific legal questions you might have. THIS IS AN ADVERTISEMENT.*