

Oregon Supreme Court Provides Much-Needed Clarity on the State's Law Regarding Whether Damage from Construction Defect Constitutes An "Occurrence"

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The Supreme Court of Oregon recently ruled that a general contractor's tort liability for its defective work may constitute a covered "occurrence" within the meaning of the ISO commercial general liability ("CGL") policy, providing much needed clarity on the issue under Oregon law.[1] However, property damage arising solely from a contractor's contractual obligations does not constitute an accident, and thus, is not an "occurrence." [2]

Plaintiffs, Weston and Carrie Twigg, hired Rainer Pacific Development LLC ("Rainer"), a general contractor, to build their home. Admiral Insurance Company ("Admiral") insured Rainer under a CGL policy. After substantial completion, the Twiggs notified Rainer of various construction defects, which caused property damage. Ultimately, the Twiggs prevailed against Rainer in an arbitration wherein the Twiggs alleged claims of breach of contract, resulting in property damage.

Rainer tendered the suit to Admiral, who denied coverage, and the Twiggs, as judgment creditors, sued Admiral, seeking to be paid for the damages awarded in the arbitration. Admiral moved for summary judgment, claiming it had no duty to indemnify because the contractor's breach of contract was not an accident, there was no "occurrence." The trial court granted Admiral's motion for summary judgment. The Court of Appeals affirmed. Plaintiffs appealed to the Oregon Supreme Court.

The Supreme Court held that under Oregon law, an insurer has no duty to indemnify when the insured's liability for construction defect arises solely from breach of contract because such damages are not accidental, as is required for there to be an "occurrence" under the ISO GCL policy. Instead, coverage depends on whether, by causing property damage, the insured also breached a duty imposed by law.

Notably, however, the Court emphasized that coverage may not be precluded simply because the plaintiffs alleged only contractual claims. Rather, coverage depends on the underlying facts giving rise to the cause of action. If the pleaded facts allege an injury in tort, such as negligence, then coverage may be triggered. The Court explained that the property damage at issue may occur solely from tort, solely from contractual breach, or a combination of both. Damage arising from a combination of tortious conduct and contractual breach is a factual matter, and coverage may not be precluded simply because the underlying liability action fails to specifically allege a tort. The court highlighted that in some instances, negligent performance of a contract might cause damage by "accident." Hence, an insurer may only deny coverage from the outset if there is no genuine issue of material fact that the claims in the underlying action arise solely out of a contractual breach.

This opinion generally moves Oregon into the majority grouping of states, finding that property damage resulting from construction defect can be caused by an “occurrence.” At a minimum, allegations that construction defects caused property damage should trigger an insurer’s duty to defend. While the case represents a significant shift in favor of policyholders, it is critical that plaintiffs allege facts (and potentially tort causes of action) sufficiently to trigger a duty to defend, which will require an insurer to defend the insured and participate in settlement negotiations.

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