

Wisconsin Supreme Court Rules in Favor of Coverage for Water Damage Arising from Alleged Construction Defects

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USA | August 12 2026

In Cincinnati Insurance Co. v. Ropicky, 2026 WI 25 (2026), the Wisconsin Supreme Court addressed whether a homeowner could recover for water damage that entered through an alleged construction defect. The decision is favorable to policyholders because it confirms that, in Wisconsin, a construction defect exclusion does not automatically bar coverage for resulting water damage.

Background

The claim arose after a severe storm allegedly caused significant water intrusion into a homeowner's residence. The insurer's engineering consultant concluded that the loss resulted from long-standing construction defects, including deficiencies in flashing and gutter components, which allegedly allowed water to infiltrate the home over a period of years. Based on those findings, the insurer relied on construction defect and fungi exclusions to limit coverage.

The homeowners disputed those conclusions, arguing that much of the damage resulted from storm-related water intrusion rather than long-term deterioration attributable to defective construction.

Key Holdings

1. Ensuing Loss Coverage Remains Available

The Court held that rainwater damage may qualify as a covered "ensuing loss" even when the water enters through an alleged construction defect. In practical terms, the policy may still exclude the cost to fix the defective construction itself, but it may cover separate damage caused by the water that followed.

The decision confirms that a construction defect exclusion does not necessarily eliminate coverage for all resulting property damage.

2. Limited Fungi Coverage Preserved

The Court also addressed the policy's fungi endorsement. It concluded that the endorsement restored only limited fungi-related coverage, subject to the endorsement's stated sublimits. It did not eliminate the fungi exclusion or create unlimited coverage for mold-related damage.

3. Coverage Questions Must Be Resolved by a Jury Where Material Facts Are Disputed

The Court found multiple factual disputes that precluded summary judgment, including:

- Whether the alleged construction defects actually existed;

- Whether the insurer's engineering analysis was reliable;
- Whether the damage resulted from long-term water intrusion, a single storm event, fungi, or other causes; and
- The extent and allocation of covered damage.

Accordingly, the Court reversed summary judgment in favor of the insurer and reinstated the homeowners' bad-faith claim.

The decision strengthens Wisconsin policyholders' ability to obtain coverage for resulting water damage even where insurers contend that a construction defect facilitated the loss. The ruling underscores the importance of carefully analyzing causation, expert opinions, and the distinction between excluded defective work and covered ensuing damage. It also highlights the difficulty insurers face in obtaining early dismissal of coverage claims when competing causation theories exist.

Additional Observations

The decision was not unanimous. In dissent, several justices expressed concern that the majority's interpretation of ensuing loss coverage could expand coverage beyond the scope contemplated by insurers and increase litigation over construction-related property claims. While the majority's opinion remains controlling, the split highlights the continuing tension between construction defect exclusions and ensuing loss provisions and suggests that these issues will remain an active area of coverage litigation. The Court's analysis also underscores the critical role of expert testimony and causation evidence, particularly where multiple potential causes of loss are present and allocation of covered versus excluded damage is disputed.

Takeaway

Ropicky is an important reminder that construction defect exclusions do not necessarily bar coverage for all resulting property damage. Where ensuing loss coverage applies, policyholders may still have coverage arguments if defective construction created the conditions for otherwise covered water damage. The practical focus will often be causation: what caused the damage, what portion is excluded, and what portion may still be covered.

Risk Mitigation Considerations

In light of the Court's analysis, policyholders should document the timing, cause, and progression of property damage and engage qualified experts early when construction defects, water intrusion, mold, or other potentially excluded causes may be involved. Coverage may depend on separating covered water damage from excluded defective construction or fungi-related damage. Records of inspections, repairs, remediation efforts, expert findings, and communications with contractors and insurers can be critical. Policyholders should also review their property policies for construction defect exclusions, ensuing loss provisions, fungi endorsements, and applicable sublimits before a loss occurs.

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