



Property Damage Coverage Covers More Than Property Damage

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Carriers employ many time-tested strategies to eliminate, or at least limit, their liability for covered claims. Policyholders must know their rights, and understand that the law is often on their side, if they want to enforce the policy as written and obtain the benefits for which they paid premiums and to which they are entitled.

One coverage-avoidance tactic we have seen carriers employ time and again is to try to limit their obligations for claims that allege both property damage, and other types of consequential damage such as lost profits or loss of reputation flowing from the alleged property damage. Carriers will try to avoid paying for the consequential losses – which can be a significant part of the value of the claim – on the grounds that they do not, in and of themselves, constitute “property damage” as defined in the policy.

A common context in which we have seen carriers attempt to separate “property damage” from “not property damage,” and to decline to pay for anything other than direct property damage, is where part of the alleged damages are costs not just to repair or replace property that is actually damaged, but also to prevent further damage from happening. For example, coatings that damage or warp floorboards or siding panels may require a plaintiff to replace not only damaged boards or panels, but also *undamaged* boards or panels. The plaintiff then seeks to recover those costs from the policyholder. The mere fact that those consequential losses are not

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themselves “property damage” is irrelevant, however, because the coverage promise in liability policies is not merely to pay for “property damage,” but also to pay “damages *because of* . . . property damage.”

The phrase “damages because of . . . property damage” has been held by numerous jurisdictions to include coverage for *all* consequential damages caused by covered property damage – not just the covered property damage itself. As stated most succinctly in *Universal Underwriters Ins. Co. v. LKQ Smart Parts, Inc.*, 963 N.E.2d 930 (Ill. Ct. App. 2011): “Liability policies cover not only damages *for* property damage, but damages *because of or on account of or by reason of* property damage. Accordingly, once covered property damage exists, all consequential damages are covered. In short, even though an item of damage is not covered as property damage, it can be covered if it constitutes a consequential damage flowing from covered property damage.” *Id.* at 943-44 (emphases in original) (quoting Allan D. Windt, *Insurance Claims & Disputes* § 11.1, at 11-17 through 11-18 (5th ed. 2007)).

Another context in which we are beginning to see carriers attempt to avoid payment of consequential damages is the context of environmental claims that require not only remediation of existing damage to soil and groundwater, but also prevention of further damage, such as dispersion of contamination from subsurface soil to indoor air. The applicable legal principle is the same – as long as the preventative measures are taken as a consequence of existing “property damage,” those measures constitute covered “damages because of . . . property damage.” *E.g., Cinergy Corp. v. Assoc. Elec. & Gas Ins. Servs., Inc.*, 865 N.E.2d 571, 582-83 (Ind. 2007) (preventative costs incurred in the context of remediating existing property damage are covered because they relate “not to preventing emissions or discharges of environmental hazards that may be produced in the future but to the cleanup costs for prior environmental damage or the containment costs to prevent release of existing hazardous substances”); *A.Y. McDonald Indus., Inc. v. Ins. Co. of N. Am.*, 475 N.W.2d 607, 624 (Iowa 1991) (“[W]e hold that response costs for preventive measures employed after pollution has taken place are incurred ‘because of property damage’ under the CGL policies.”); *Diamond Shamrock Chemicals Co. v. Aetna Cas. & Sur. Co.*, 554 A.2d 1342, 1348 (N.J. Super. 1989) (“There is no novelty to the proposition that in a conventional tort action, once some present injury has been proved, the plaintiff’s damages may include the cost of measures intended to prevent future injury.”)

In sum, if a carrier claims that certain alleged damages are not covered because they are economic in nature, or are geared toward preventing future injury rather than rectifying existing injury or damage, do not accept that assertion at face value. As long as those economic damages or preventative costs are incurred *as a consequence of covered property damage*, the policyholder has sound arguments, backed by controlling precedent in many jurisdictions, that those types of damages are covered.