



ALERTS

Illinois Supreme Court Changes Law For Construction Defect Coverage

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Highlights

The Illinois Supreme Court opened the door for commercial general liability (CGL) policies to potentially cover construction defect cases

The court held CGL policies can provide coverage in Illinois for damage caused by inadvertent construction defects

This decision reverses a previous tendency among Illinois courts to find no coverage for faulty workmanship either because it is inherently not accidental or because there was no damage beyond the insured defendant's scope of work

The Illinois Supreme Court has opened the door for commercial general liability (CGL) insurance policies to cover construction defect cases. Overturning years of lower court cases, the court held that CGL policies can provide coverage for damage caused by inadvertent construction defects. Faulty workmanship qualifies as an accidental "occurrence" and that actual damage, even within the insured's scope of work, is insurable "property damage."

In *Acuity, a Mutual Insurance Co. v. M/I Homes of Chicago LLC*, the

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Illinois Supreme Court held that homebuilder M/I Homes may be covered against allegations that its subcontractors caused water damage “by using defective materials, conducting faulty workmanship and failing to comply with applicable building codes.” There were two key prongs to the court’s holding.

First, the court rejected the notion that there could be no “property damage,” as defined by the policy, unless the underlying complaint alleged damage to something beyond the townhomes that M/I Homes constructed. Although faulty workmanship in and of itself is not “property damage,” the court held that, under the language of a CGL policy, “resulting water damage to the interior of the completed units plainly constitutes physical injury to tangible property.”

Second, the court rejected the insurance company’s argument that “damage to any portion of the completed project caused by faulty workmanship can never be caused by an accident because it is always the natural and probable risk of doing business.” The court held that “the unintended and unexpected harm caused by negligent conduct” is an “accident” and therefore an “occurrence” that can be insured under a CGL policy.

The court did not decide the ultimate issue of whether Acuity had a duty to defend M/I Homes in the underlying suit. Instead, the court remanded the case to the trial court to consider whether certain exclusions in the CGL policy may preclude the duty to defend.

This new decision reverses a previous tendency among Illinois courts to find no coverage for faulty workmanship, either because it is inherently not accidental or because there was no damage beyond the insured defendant’s scope of work. Now, there is more reason for optimism among policyholders in the construction industry – including developers, general contractors and subcontractors – as policyholders facing construction defect claims in Illinois may now be able to obtain coverage for these claims under their CGL policies.

Policyholders facing claims for inadvertent construction defects should carefully analyze the allegations of the underlying complaint and the exclusions contained in their policies to determine if coverage may be available to them under their policies. Policyholders in the construction industry should also carefully consider the implications of any exclusions when purchasing CGL policies.

For more information, please contact the Barnes & Thornburg attorney with whom you work or Ken Gorenberg at 312-214-5609 or kgorenberg@btlaw.com or Kelly Koss at 312-214-8825 or kkoss@btlaw.com.

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