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Scott Seaman Puts a Recent Illinois Supreme Court Ruling on Construction Defect Coverage into Context for Law360

In The News | 1 min read

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Scott Seaman was featured in *Law360 Insurance Authority,* commenting on an Illinois Supreme Court ruling on insurance coverage for construction defects.

The Illinois Supreme Court determined water damage to the interior of completed townhouse units, as alleged in the complaint by the homeowner's association if proven, constitutes a physical injury to tangible property and would satisfy the definition of "property damage."

As alleged, neither the cause of the harm (the defect) nor the harm (the resulting water damage to the walls of the interior of the units) was intended, anticipated, or expected. Thus, the "occurrence" requirement is satisfied for the duty to defend.

It is important to emphasize that the Illinois Supreme Court's decision addressed only the duty to defend, a broader duty than to indemnify. It is based upon the *potential* for coverage and requires reading the allegations of the complaint liberally in favor of the policyholder. The proofs may not support the allegations, so there may be no duty to indemnify.

Further, the Illinois Supreme Court did not conclude there was a duty to defend, only that the allegations were sufficient to establish the first step of the analysis that the claim potentially fell within the policy's coverage grant.

The court recognized that the duty to defend may be precluded by an exclusion such as business risk exclusions (j) and (l). Accordingly, the Illinois Supreme Court never reached a conclusion on the duty to defend. Instead, it remanded the case to the trial court to address whether the exclusions apply to preclude a duty to defend.

Read the full article *(subscription required)*

"Ill. Justices Say Defect Suit's Claims Fall Within CGL Policy" was published by *Law360 Insurance Authority* on November 30, 2023.

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