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NORTHWEST INSURANCE LAW

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OREGON SUPREME COURT BARS INSURER FROM LITIGATING COVERAGE ISSUES IN SUBSEQUENT LAWSUIT FOLLOWING VERDICT IN UNDERLYING CONSTRUCTION DEFECT LAWSUIT

by Eliot M. Harris

Standard CGL policies limit coverage for only covered "property damage" as defined by the policy. For policies issued to contractors, however, it is not always clear whether the alleged damage constitutes covered "property damage," or whether such damages were caused by an "occurrence" during the policy period. Oftentimes, the jury in the underlying construction defect lawsuit is not asked to decide such questions, so it is left open for subsequent coverage litigation to resolve. However, the Oregon Supreme Court recently upheld a lower court ruling that barred an insurer from subsequently litigating the issue of which portion, if any, of the jury's award against a subcontractor constituted covered versus uncovered "property damage."

In *Fountaincourt Homeowners' Assoc. v. American Family Mut. Ins. Co.*, 360 Ore. 341, 2016 Ore. LEXIS 613, the case arose from the construction of an 11-building, 97-unit multifamily housing complex in Beaverton, Oregon. The project was completed in phases between September 2002 and July 2004. In 2007, the project owner (FountainCourt) sued the developers and general contractor for construction defects. FountainCourt later sued various subcontractors, including the insured, which installed the buildings' exterior siding, weather-resistant barriers and windows. The insurer, which provided coverage during a portion of the construction, provided a defense subject to a full reservation of rights. At trial in the underlying construction defect action, FountainCourt sought a total of $3.8 million for the "reasonable costs of repairing the damaged property" and asked the jury to allocate about 40 percent of the fault to the insured. The jury returned a general verdict of $2.1 million and allocated 22.65 percent fault to the insured. The award against the insured did not separate repair costs necessary to fix the subcontractor's work, which arguably is not covered under the policy, from those costs to repair other damaged components of the buildings, which arguably could be covered under the policy.

After trial, FountainCourt sought to garnish the insurer's policies to the insured to satisfy the unpaid portion of the nearly $486,000 judgment against the insured. At a garnishment hearing, the insurer denied that the loss was covered by its policies because, among other reasons, the damages did not arise from "property damage" or an "occurrence" and did not arise during the policy period. The insurer also argued that such coverage issues could not be decided without a jury trial. FountainCourt argued that the insurer was not permitted under Oregon law to relitigate whether property damage had occurred as that was decided by the jury in the underlying case. The trial court agreed with FountainCourt and stated that "an insurer cannot, in a subsequent proceeding, retry its insured's liability, or alter the nature of the damages awarded in that proceeding." The Court noted that the jury was asked to decide whether "physical damage to their property" caused by the insured's negligence had occurred.

The Oregon Supreme Court unanimously upheld the trial court's ruling that the policy language requiring the insurer to pay sums that insured subcontractor becomes "legally obligated to pay as damages" because of covered property damage could be measured only by looking to the underlying verdict. In doing so, the Court rejected the insurer's argument that the jury was not asked to determine what portion of the damages was covered versus uncovered. The Court further noted that the jury was instructed to award damages only for physical damage to the FountainCourt complex, not for defective workmanship. The Court stated that "[t]he trial court did not err in determining, as a matter of law based on interpretation of the insurance contracts, that the sum that [the insured] became legally obligated to pay as damages in the underlying action were for 'property damage.'" The Court also rejected the insurer's argument that FountainCourt was required to show precisely how much property damage happened during the insurer's policy period to establish that an accidental "occurrence" took place within the meaning of the policy. The Court found that this argument conflicted with Oregon law and policy language indicating that the insurer may be required to cover damages outside of the policy period.

The Court's ruling in *FountainCourt* undercuts an insurer's ability to seek a separate trial on certain coverage issues. As a result, insurers for general contractors and subcontractors in Oregon should pay close attention to the jury instructions in the underlying construction defect case as they may not have the opportunity to litigate certain coverage issues in a subsequent coverage lawsuit.

ALASKA FEDERAL COURT REFUSES TO NARROWLY DEFINE CONTRACTOR IN INTERPRETING AN EXCLUSION

by Meredith E. Dishaw

In a recent opinion, Judge John Sedwick of United States District Court for the District of Alaska refused an insured's assertion that the term "contractor," in the Contractors Exclusion, was limited to contractors in the construction industry. Instead, the Court looked to the plain and common meaning of the term and concluded that it included "any person or company that is party to a contract and usually involves a contract regarding services or supplies."

In *Great Divide Ins. Co. v. Bear Mountain Lodge, LLC,* 2016 U.S. Dist. LEXIS 82630the insurer filed a declaratory judgment action against its insured to determine whether there was coverage under its policy for tort lawsuits against its insured. The insured and its individual owners were named in various lawsuits arising out of an airplane crash. The airplane, owned and piloted by an unrelated entity, Rediske Air, was transporting guests to Bear Mountain Lodge when it crashed, killing the pilot and passengers. The survivors and the passengers' estates filed lawsuits against the pilot, Rediske Air, and the insured. The pilot's estate filed cross-claims against the insured as well.

In the declaratory judgment action, the insurer asserted that three exclusions applied to bar coverage for the underlying lawsuit – the "Aircraft Exclusion," the "Designated Operations Exclusion," and the "Contractors Exclusion." The insured moved for summary judgment arguing that none of the exclusions applied to bar coverage. As a result of Rediske Air's motion to stay the coverage action, the Court only examined whether the Contractors Exclusion applied.

The Contractors Exclusion provides: "This insurance does not apply to 'bodily injury', 'property damage', 'personal and advertising injury' or medical payments arising out of work performed by any contractor or subcontractor whether hired by or on behalf of any insured, or any acts or omissions in connection with the general supervision of such work." The insured argued that the exclusion did not apply because "contractor" only referred to contractors in the construction industry, i.e. where an insured hires a contractor to perform construction work. `Under Alaska law, "policy language is construed in accordance with ordinary and customary usage." The Court looked to the common and legal definitions of "contractor" and concluded that, while the term includes those under contract for construction services, its common usage was not limited solely to construction contractors. Instead, "contractor" was commonly understood to include "any person or company that is a party to a contract and usually involves a contract regarding services or supplies." Thus, the Court held that "contractor" could not reasonably be understood as referring only to construction-type contractors.

The Court also rejected the insured's argument that the exclusion only applied if the insured hired the contractor. Since the insured only purchased the airplane tickets on the passengers' behalf, it had not hired Rediske Air. The Court found that the insured failed to establish that there was no genuine issue of material fact as to whether the insured had hired Rediske Air. Finally, the Court rejected the insured's argument that the underlying actions alleged that damages were caused by the insured's negligence and, thus, the exclusion did not apply. The insured only raised this argument in its reply. Nevertheless, the Court noted that the exclusion barred coverage for "damage 'arising out of…acts or omissions in connection with the general supervision of [the contractor's or subcontractor's work]." The Court noted that the allegations in the underlying action went to the insured's allegedly negligent hiring, training, regulation, oversight, and, thus, the Court could not hold that the allegations regarding the insured's negligent conduct precluded application of the exclusion. Ultimately, the Court denied the insured's motion for summary judgment.

This decision is important not only because it rejected the narrow interpretation of contractor offered by the insured, but also because it offers a definition of contractor under the Contractor's Exclusion to be applied under Alaska law.

WASHINGTON APPELLATE COURT EXPANDS APPLICATION OF IMPLIED WAIVER OF ATTORNEY-CLIENT COMMUNICATIONS DURING DISCOVERY FOR REASONABLENESS HEARING FOLLOWING A COVENANT JUDGMENT

by Eliot M. Harris & Jessica M. Cox

On July 26, 2016, the Washington Court of Appeals, Division II held that an implied waiver of attorney-client communications may occur when an insured enters into a covenant judgment with a claimant and an insurer challenges the reasonableness of the settlement. However, the Court held that, under the proper standards, the petitioners did not impliedly waive the attorney-client privilege nor was their work product discoverable.

In *Steel v. Olympia Early Learning Center, 2016 WL* 4001431, sexual abuse victims who attended Olympia Learning Center (OELC) and their parents (Claimants) brought negligence claims against OELC and its executive and program director (Insureds). Though OELC's liability insurer (Insurer) agreed to defend, the Insureds entered into a settlement agreement with the Claimants that included a covenant judgement of $25 million and an assignment of the Insured's claims against the Insurer to the Claimants.

Before entry of the stipulated judgment, the Insurer moved to intervene and sought "focused discovery" related to the reasonableness of the covenant judgement. After the Insureds stipulated to the Insurer's intervention and the requested discovery, the trial court allowed intervention and ordered the Claimants to produce all discovery exchanged by the parties and all attorney work-product related to the settlement. What followed was a series of motions by the Insurer and the Claimants to expand and limit the scope of discovery.

Based on the trial court's rulings, the Claimants produced nearly 200,000 pages of discovery and the Insurer deposed some of the Insured's personal counsel and defense counsel. The trial court also ruled that the Claimants' attorney's "non-mental impression" and "non-opinion work product" were discoverable because the Insurer demonstrated substantial need under CR 26(b)(4) in order to explore the reasonableness of the settlement under the nine-factor test set out in *Glover v. Tacoma Gen. Hosp.,* 98 Wn.2d 708, 7171, 658 P.2d 1230 (1983). Additionally, the Claimants produced a privilege log of e-mails that they believed were privileged as opinion and mental impression work product and attorney-client privilege communications. The Claimants moved for a protective order to preclude discovery of these emails.

The Insurer moved to compel for a more detailed privilege log and for release of the withheld attorney-client communications. The Insurer argued that privilege had been "impliedly" waived with respect to these materials. In the end, the trial court appointed a special discovery master to review the Claimants' records for privilege and instructed the special discovery master to (1) "review whether [Claimants'] documents contained privileged attorney work product opinions and mental impressions and/or attorney-client communications and then (2) even if he found a document to be privileged or protected, he could recommend discovery of the document based on the application of an 'exception' to the privilege that if the record is 'directly related' to one of the [nine] *Glover* factors, the privilege was waived for purposes of a reasonableness hearing."

The discovery master recommended that the work product and attorney-client communications relevant to a reasonableness determination be produced. The trial court adopted these recommendations and ordered production of documents pursuant to the discovery masters' `recommendations. Some of the Claimants appealed the trial court's order regarding production of privileged documents.

The Court of Appeals reversed the trial court order compelling production of privileged documents and concluded that the Claimants had not impliedly waived their attorney-client communications and work product privilege when they sought a reasonableness determination of a covenant judgment settlement.

However, in a significant ruling, the Court recognized that the implied waiver may apply for a reasonableness determination following a covenant judgment. While the Court rejected the relevancy standard for waiver of the attorney-client privilege applied by the trial court and found no automatic waiver applies in this context, the Court decided that such cases must be assessed on a case-by-case basis by application of the *Hearn* factors. (*Hearn v. Rhay,* 68 F.R.D. 574 (D.C.Wash.1975)). The *Hearn* test, which was adopted by Washington Courts in Pappas v. Holloway, 114 Wn.2d 198, 204-09, 787 P.2d 30 (1990), requires consideration of three factors in order to find implied waiver of the privilege. While no reported decision in Washington has decided whether the *Hearn* test applied outside of legal malpractice lawsuits, the Steel Court found that *Hearn* could apply in other situations, such as reasonableness hearings following covenant judgements between insureds and claimants.

This ruling is significant because it allows insurers to argue that they may seek additional discovery when challenging the reasonableness of a covenant judgment. However, while the Court recognized that an implied waiver could occur, the Court limited the application of the waiver of a privilege in this case. Regardless, this is a new development in this context that will likely influence the scope of discovery in future cases involving reasonableness hearings.

OREGON FEDERAL COURT BROADLY INTERPRETS PROPERTY POLICY TO FIND COVERAGE FOR "PROPERTY DAMAGE" DESPITE NO "PHYSICAL" INJURY TO STRUCTURAL PROPERTY

by Margaret Duncan

When interpreting an insurance policy, insurers must remember that Courts may broadly interpret policy terms providing coverage if the policy language is not explicitly limited by definitions contained in the policy. In a recent case in Oregon, a federal magistrate judge granted an insured's motion for summary judgment and found that the insured's claims for polluted air that affected an outdoor concert were covered by a property insurance policy. In reaching its conclusion, the Court broadly construed the terms "physical loss or damage" and "restoration."

In *Or. Shakespeare Festival Ass'n v. Great Am. Ins. Co.*, 2016 U.S. Dist. LEXIS 74450 (D. Or. June 7, 2016), the insured, Oregon Shakespeare Festival Association, operated an open-air, partially enclosed theater. Smoke, ashes, and dust from several different wildfires nearby permeated the interior of the theater and subsequently coated the seating, HVAC, lighting, and electronic systems. While there was no permanent or structural damage to the theatre, the insured cancelled four separate evening performances due to health concerns for its actors, staff, and patrons from the poor air quality caused by the wildfire smoke.

Despite the lack of physical damage to the theater, the insured sought coverage for its losses under its property insurance policy, which provided coverage for "physical loss of or damage to covered property." The policy did not define the terms "physical loss or damage." When the insurer denied coverage on the basis that no covered damage had occurred, the insured filed suit and moved for summary judgment. In granting the insured's motion for summary judgment the Court found that the claim was covered under the policy because the theater had sustained "physical loss or damage to property" when the wildfire smoke infiltrated the theater and rendered it unusable for its intended purpose. The Court cited to Oregon case law finding that odor was "physical" and that "physical damage can occur at the molecular level and can be undetectable in a cursory inspection." See *Farmers Ins. Co. of Oregon v. Trutanich*, 123 Or. App. 6, 858 P.2d 1332 (1993); *Columbiaknit, Inc. v. Affiliated FM Ins. Co.*, 1999 U.S. Dist. LEXIS 11873 (D. Or. Aug. 4, 1999).

By finding that the plain meaning of the terms of the policy favored coverage, the Court rejected the insurer's argument that the loss or damage must be physical. The Court stated, "while air may often be invisible to the naked eye, surely the fact that air has physical properties cannot reasonably be disputed." The Court also dismissed the insurer's claim that in order to be "physical," the loss or damage must be structural to the building itself. The Court noted that the policy did not include any limitations to the meaning of the term "physical."

The Court also found that the policy provided coverage for loss of business income sustained "due to the necessary 'suspension' of your 'operations' during the 'period of restoration.'" While the insurer argued that the smoke in the air at the theater did not require any "repairs" to the structure of the property and, therefore, there was no "period of restoration" such that business income loss coverage would apply, the Court found that it was undisputed that the interior of the theater had to be cleaned, the air filters had to be changed multiple times, and the smoke in the air within the theater had to dissipate before business could resume. The Court further disagreed that structural repairs were required in order to find that "restoration" occurred since this term was not defined in the policy.

The Court's decision in this case is significant because it demonstrates how some Courts may broadly interpret any undefined terms in a policy's insuring language to find coverage for insureds.

WASHINGTON COURT FINDS NO "COLLAPSE" COVERAGE DESPITE ENGINEER'S OPINION THAT BUILDING COULD NOT SUPPORT REQUIRED LOADS UNDER THE BUILDING CODE

by Eliot M. Harris

For decades, Washington insurers have faced building "collapse" claims despite the fact that no Washington Court had rendered a clear definition of what "collapse" meant. That changed last year when the Washington Supreme Court held in *Queen Anne Park Homeowners Association v. State Farm Fire and Casualty Company*, 352 P.3d 790 (2015), that "collapse" meant "substantial impairment of structural integrity," but not necessarily an eminent falling down of the building. While *Queen Anne Park* provided some clarity for the definition of "collapse," it also raised a number of questions that will likely need to be litigated to further refine the definition of "collapse."

In *American Economy Insurance Company v. CHL, LLC*, 2016 U.S. Dist. LEXIS 88286, the court was asked to decide whether the opinion of a structural engineer that the building had sustained "substantial structural impairment" because the building did not comply with the applicable building code was sufficient. In *CHL*, the insurer provided coverage for the insured from 1999 to 2005 for an apartment complex in Seattle. From 1999 to 2002 the term "collapse" was undefined in the policy, but from 2002 to 2005, "collapse" was defined in the policy to mean actual falling down of the building or part of the building. In 2014, significant decay of the buildings rim joists was discovered during renovation work. The insured began repairing the damaged joists, while the apartment complex remained occupied and submitted a claim to the insured for damage to the building.

The insured sent a structural engineer, Jim Perrault, to inspect the building, and he concluded that several of the decayed rim joists suffered from "substantial structural impairment." Mr. Perrault defined that term as meaning (1) the joists could not support the necessary loads to meet the building code; (2) based on the joists weakened load-bearing ability, the building could be classified as a "dangerous building" by a building inspector. Mr. Perrault estimated that several of the joists had reached the point of "substantial structural impairment" sometime between 1999 and 2002.

The insurer denied the claim prior to the Washington Supreme Court's ruling in the *Queen Anne Park* on the basis that "collapse" in the policies from 1999 to 2002 required the actual falling down of the building or part of the building to be eminent. After the Washington Supreme Court issued its decision in the *Queen Anne Park* case, the insurer again denied the claim under these policies that did not contain a specific definition of "collapse." After the insured filed suit, the insurer moved for summary judgment on whether a "collapse" had occurred during the 1999 to 2002 policies because the building did not "collapse" during that time period.

The Court granted the insurer's motion for summary judgment and held that the definition of "substantial structural impairment" used by the structural engineer was different from the Washington Supreme Court's definition in *Queen Anne Park*. The *CHL* court stated that even though the building code is designed to protect safety, "that does not mean that a failure to meet the building code necessarily means a building is 'unsafe' in a way that the Washington Supreme Court used that term." The court further noted that even if a building inspector might classify a building as "a dangerous building" based on its impaired load-bearing capacity, this does not mean that the building is necessarily in a state of collapse. Citing to *Queen Anne Park*, the *CHL* court reiterated that "collapse" meant "substantial impairment of structural integrity" and that "structural integrity" meant "a buildings ability to remain upright" and "substantial impairment" as a "severe impairment." The *CHL* court noted that, under *Queen Anne Park*, "collapse" means more than mere settling, cracking, shrinkage, bulging, or expansion, and to establish coverage, the insured must show that all or part of the building is unfit for its function or unsafe.

The *CHL* court further noted that "it is implausible that the building had a structural impairment of its ability to remain upright between 1999 and 2002 given that the building remains standing without renovation until 2014." The court also noted that the fact that the tenants were allowed to remain in the building in 2014 during the renovation, and after a purported twelve more years of deterioration, without shoring in place, established that the building did not reach a state of collapse, as a matter of law, between 1999 and 2002.

The court's decision in *CHL* provides useful guidance for insurers when handling claims for "collapse" under a first-party property policy. The court's analysis that a violation of the building code, by itself, is insufficient to establish a collapse, as well as the court's reasoning that a building that remains standing for over a decade following the policy period provides strong evidence that the building was not in a state of collapse during the policy period. Given the court's ruling in this case, structural engineers investigating a potential collapse claim for an insured will likely need to show more than a violation of the building code to establish substantial structural impairment for "collapse" claims.

IDAHO SUPREME COURT RULES ANTI-STACKING CLAUSE IN INSURANCE POLICY IS AMBIGUOUS

by Eliot M. Harris

Insurers seeking to limit their liability may include so-called "anti-stacking" language in their policies. Such policy language is designed to limit the total available coverage to one policy and prevent the insured from "stacking" multiple policies on top of each other to expand the limits of available coverage. However, despite its efforts to limit coverage to a single policy limit, courts have found ways to get around such anti-stacking language.

In *Gearhart v. Mut. of Enumclaw Ins. Co.*, 2016 WL 4041704 (Idaho July 27, 2016), the Idaho Supreme Court allowed an insured to stack multiple policies despite the anti-stacking language in an "other insurance" provision in the policy. In this case, the claimant suffered a severe brain injury with permanent cognitive defects in an automobile accident caused by an underinsured motorist. The insured's divorced parents each had policies with the same insurer that named the insured as a beneficiary. Both policies provided $300,000 limits for accidents caused by underinsured motorists, and contained identical "other insurance" provisions with anti-stacking clauses that read: "If there is other applicable similar insurance we will pay only our share. Our share is the proportion that our limit of liability bears to the total of all applicable limits. If this policy and any other policy providing similar insurance apply to the accident, the maximum limit of liability under all the policies shall be the highest applicable limit of liability under any one policy."

By a 3-2 vote, the Idaho Supreme Court affirmed the trial court's ruling that the other insurance provision was ambiguous because it was "confusing to the extent of being an ineffective barrier to the coverage afforded by both policies." The Court went on to state "Good luck to the average insurance buyer in deciphering the meaning of this provision" in the policy. The Court distinguished its holding in *Erland v. Nationwide Ins. Co.*, 136 Idaho 131, 30 P.3d 286 (2001), where it upheld an other insurance provision that provided "if more than one policy applies, total limits applicable will be considered not to exceed the highest limits amount of any one of them." Unlike *Erland,* the *Gearhart* Court found that the other insurance provision in this case could be interpreted to mean that the highest available limit under both policies was the aggregate of all applicable policies. The Court went on to state how Idaho public policy does not compel a different result because this was not the case where there was a danger of the insured being overcompensated for his injuries.

The lengthy dissenting opinion focused on how insurance policies are complex and sometime difficult to read, but noted that "there is a significant difference between complex language and ambiguous language." The dissent found it "absurd" and "nonsensical" that the majority interpreted the other insurance provision as requiring aggregating of policy limits. The dissent went on to state that "the anti-stacking clause is neither ambiguous nor complex. Its plain language serves to limit the maximum benefits available where multiple policies exist to the maximum benefit provided 'under any one policy.' How hard is that to understand?"

This decision creates uncertainty in whether anti-stacking provisions will be upheld in Idaho, and possibly other states. To wit, policies in any state with similar anti-stacking clauses may be subject to attack based on the Court's analysis in this case.

WASHINGTON FEDERAL COURT FINDS NO "OCCURRENCE" UNDER HOMEOWNERS' POLICY BASED ON INSURED'S VIOLATION OF CONDOMINIUM BYLAWS

by Eliot M. Harris

Two of the most commonly disputed issues regarding coverage under the insuring clause of a homeowner's liability policy are whether "property damage" took place, and whether such damage was caused by an "occurrence." In a recent case in Washington, the Court adopted a broad interpretation of "property damage" under a homeowner's policy, but still found no coverage when the insured violated the terms of their condominium bylaws, despite their claim that they did so unknowingly, because the Court found that no "occurrence" had taken place.

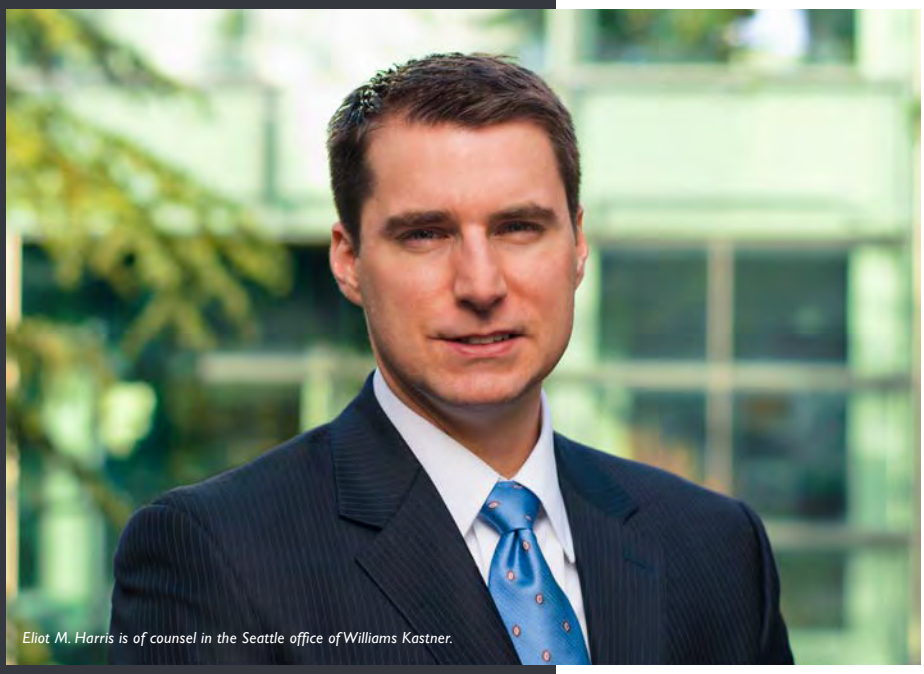
In *Keeley v. Travelers Home and Marine Ins. Co.,* 2016 U.S. Dist. LEXIS 80798, Judge Coughenour in the United States District Court for the Western District of Washington granted a motion by the insurer for summary judgment finding that no coverage existed under a homeowner's policy for a claim brought by an adjacent condominium owner against the insured for installing wood floors that violated the condominium bylaws. In this case, the insured installed hard surface flooring in their unit without obtaining the prior written consent of the owner of the unit below—a violation of the condominium bylaws. When the adjacent owner complained about noise from the hard surface floor, the insured tendered the claim to the insurer, which denied coverage on the basis that no "property damage" or "occurrence" had taken place under the policy. After the denial of coverage, the adjacent owner filed suit against the insured for injunctive relief to remove the hard surface flooring and to prevent future installation of hard surface flooring. The insured and the adjacent owner entered into a settlement in which the insured agreed to remove the hard surface floors, which cost approximately $22,000, and pay approximately $3,400. The insured then filed suit against the insurer for breach of contract, as well as extra contractual claims, including bad faith and coverage by estoppel.

In ruling on the insurer's motion for summary judgment, the Court found that "property damage" existed in this case because the policy defined property damage as "physical injury to, destruction of, or loss of use of tangible property." The Court found that the noise caused the claimant from the hard surface flooring constituted "loss of use of tangible property."

However, the Court found that no "occurrence" had taken place because the insured had a duty to abide by the condominium bylaws, and failed to do so. The Court rejected the insured's argument that they did not intentionally violate the bylaws, and were unaware of the restriction preventing them from installing hard surface flooring at the time they did so. The Court found that under Washington law, and insured's subjective knowledge does not govern whether an action is "accidental" under the definition of "occurrence" in the policy. The Court noted that the question is what a reasonable person in the insured's position knew or should have known at the time they took the action. Based on the circumstances presented, the Court found that the installation of the floor was not an "unexpected, independent, and unforeseen happening," and therefore, no "occurrence" within the meaning of the policy took place.

The Court went on to find that because it is not reasonable to conclude that ignorance of one's own duty constitutes an accident for the purposes of an insurance policy, there was no duty to defend in this case, and the insurer did not breach the policy. The Court also dismissed the insured's claims for bad faith and violation of Washington's Insurance Fair Conduct Act.

This case is a significant because while the Court took an expansive approach towards the definition of "property damage" under this policy to include loss of use when not associated with actual physical damage to property, the Court still found that no "occurrence" had taken place despite the fact that the insured claimed that they did not knowingly breach the condominium bylaws. This decision appears to support the argument that an insured's breach of a duty that they should have known about would not constitute an "occurrence," at least under the definition of this term in the policy at issue in this case.



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Washington, Oregon

United States Court of Appeals
for the Ninth Circuit

United State District Court,
Western District of Washington

United State District Court,
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Eliot's practice focuses on commercial litigation with an emphasis on insurance coverage, including general liability coverage, trademark and intellectual property coverage, construction defect coverage, and professional liability coverage. He has successfully represented insurers in Washington, Oregon, California, and Arizona courts. He has tried multiple cases to verdict, including cases involving bad faith and punitive damages against insurers. Eliot also has experience defending lawsuits involving catastrophic personal injuries, environmental toxic tort, intellectual property and product liability.

Mr. Harris was named a "Rising Star" for 2010-2012 and 2014-2016 by Washington Law and Politics Magazine. He has tried multiple cases to verdict, including cases involving insurance coverage issues and bad faith. He has taken countless depositions and obtained dismissals of claims for clients in both State and Federal courts.

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Margaret is a member of the Business Litigation practice group. Her practice is focused on general litigation, insurance, and bankruptcy. Margaret has worked on a variety of cases defending corporations and businesses in employment and breach of contract claims. She has also worked on an array of cases representing insurance companies in commercial general liability coverage disputes.

Prior to joining Williams Kastner, Margaret worked as a paralegal for a Chapter 13 Trustee in Denver, Colorado. While working for the trustee, she reviewed and prepared to implement Chapter 13 bankruptcy plans for individual debtors, as well as analyzed bankruptcy plans to accurately disburse funds received from the debtor to each creditor.

During law school, Margaret received CALI Awards in Civil Procedure, Legal Writing I, and Elder Law. She also acted as an Executive Editor for the Seattle Journal for Social Justice and was one of five graduating students nominated for the National Order of Scribes. Margaret is a particularly skilled legal writer and is experienced in drafting motions and briefs.

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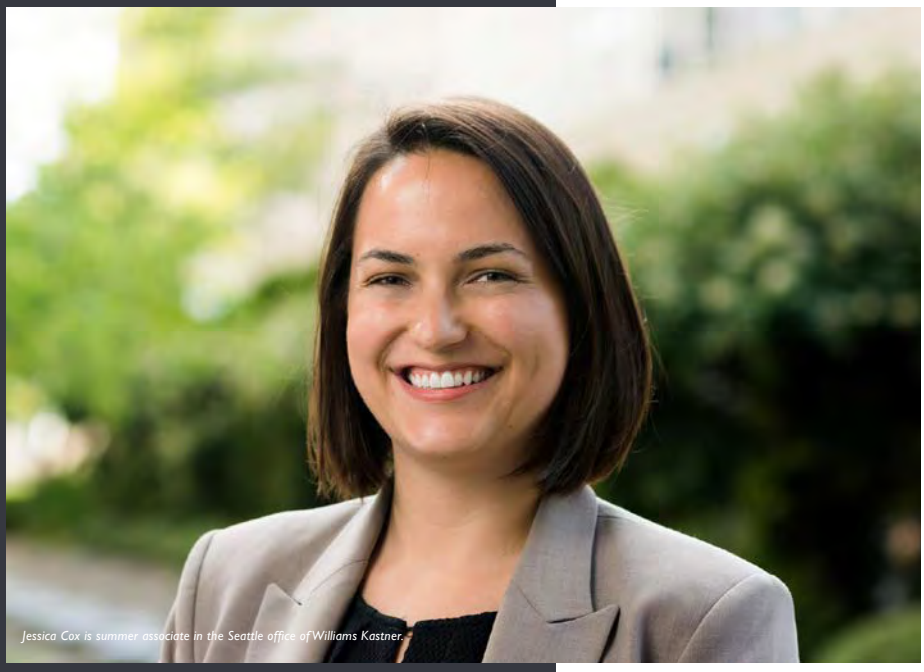
Meredith Dishaw is an associate in the Seattle office of Williams Kastner. Her practice focuses on business litigation at both the state and federal court levels. Her practice focuses on representing public and private owners, contractors, and sureties throughout the construction process, with a particular focus on commercial construction litigation. Ms. Dishaw has represented clients in federal and state courts throughout the country and in private arbitration proceedings in various construction-related matters, including payment, performance and supply bond claims, prompt payment claims, mechanic's lien claims, indemnity issues, latent and patent defects in construction and design, and contract and warranty claims.

Ms. Dishaw's practice also focuses on defending sureties and insurers from common law and statutory bad faith and extra-contractual claims.



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Research contributions from Jessica Cox.
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