

WASHINGTON

Construction Defect as Occurrence

Mid-Continent Casualty Co. v. Titan Constr. Corp., 281 Fed. Appx. 766, 2008 WL 2340493 (9th Cir. 2008), applying Washington law. The negligent construction of a condominium project that resulted in breach of contract and breach of warranty claims against the insured contractor constituted an occurrence under its CGL policy, in the absence of any indication of an intentional breach of contract by the insured.

Overton v. Consolidated Ins. Co., 38 P.3d 322 (Wash. 2002). In the context of coverage for environmental contamination, the court held that the definition of occurrence in the 1973 CGL policy form contains no requirement that the damage must have occurred to a third party's property, rather, that limitation was found in the exclusions of the policy.

Yakima Cement Products Co. v. Great Am. Ins. Co., 608 P.2d 254 (Wash. 1980). The insured's unintentional and unexpected mis-manufacture of concrete panels, necessitating their removal, repair, refabrication, and re-erection, was considered an accident and thus an occurrence.

Application of Property Damage Exclusions

Mid-Continent Casualty Co. v. Titan Constr. Corp., 2009 WL 1587215 (W.D. Wash. June 5, 2009). The Sistership Exclusion only applied to withdrawal of product by the insured and did not apply to exclude damage related to sprinkler systems that were recalled by manufacturer or to condominium owner's rejection of siding.

Mid-Continent Casualty Co. v. Titan Constr. Corp., 281 Fed. Appx. 766, 2008 WL 2340493 (9th Cir. 2008). The court upheld coverage for the insured contractor for property damage arising out of defective workmanship by its subcontractor on a condominium project, holding that Exclusion k, the Your Product Exclusion, did not apply due to the exception in the definition of "your product" for real property. In addition, it held that Exclusion I, the Your Work Exclusion, did not apply due to the subcontractor exception.

Mutual of Enumclaw Ins. Co. v. T & G Constr., Inc., 199 P.3d 376 (Wash. 2008). Even if defective siding was not damaged, the Your Work and Impaired Property Exclusions did not exclude coverage for the cost to remove and replace defective siding if such work was necessary to repair damage to surfaces and interior walls under the siding.

Mutual of Enumclaw Ins. Co. v. MacPherson Constr. & Design Inc., et al., 2007 WL 2029284 (Wash. Ct. App. July 16, 2007). Your Work Exclusion barred coverage for water damage resulting from a subcontractor's defective installation of siding, and the completed operations hazard does not allow coverage for work by subcontractors.

Mutual of Enumclaw Ins. Co. v. Patrick Archer Constr., Inc., 97 P.3d 751 (Wash. Ct. App. 2004). The 1973 Products Exclusion applied to the property damage due to the construction defects in a condominium project built by the insured contractor and the expanded coverage provided by the subcontractor exception to the BFPDE Work Performed Exclusion was nevertheless subject to that exclusion.

Diamaco, Inc. v. Aetna Cas. & Sur. Co., 983 P.2d 707 (Wash. Ct. App. 1999). Exclusion j, the Faulty Workmanship/Operations Exclusion, and Exclusion m, the Impaired Property Exclusion, applied to bar coverage for the defective work of a contractor on a road construction project.

Marley Orchard Corp. v. Travelers Indem. Co., 750 P.2d 1294 (Wash. Ct. App. 1988). The 1973 Work Performed and Products Exclusions did not apply to bar coverage, since the damage was not to the insured's work, but to an apple orchard was due to the insured's defective design of an irrigation system.

Harrison Plumbing & Heating, Inc. v. New Hampshire Ins. Group, 681 P.2d 875 (Wash. Ct. App. 1984). The BFPDE Faulty Workmanship Exclusion applied to bar coverage for the damages due to the repair of property caused by the defective workmanship of a plumber due to the plumber's negligence.