

Supreme Court Finds Duty to Defend in Law School Library Case

On Monday, the Connecticut Supreme Court confirmed that allegations of property damage which occurs after completion of a building can trigger the duty to defend under insurance policies in place at the time of the alleged damage, as well as at the time of the construction. The dispute in Travelers Cas. & Surety Co., et al. v. Netherlands Ins. Co., et al. arose out of the construction of the University of Connecticut law library. Following the completion of the project, the State of Connecticut began experiencing problems with water intrusion and expended more than \$15 million in corrective costs. The State brought suit against Lombardo Brothers Mason Contractors, Inc. (“Lombardo”), among many others, alleging defects in the design and construction.

Lombardo’s portion of the construction on the library took place between 1994 and 1996. In 2005, Lombardo alerted its insurance carriers about the State’s complaints concerning the building. Lombardo was insured by the Travelers from 1994-1998, by Lumbermens from 1998-2000 and by the Netherlands Insurance Company (“Netherlands”) from 2000-2006. Travelers agreed to participate in the investigation and defense of the State’s claim against Lombardo and ultimately spent over \$482,855 defending Lombardo. Travelers then filed a complaint against the other insurers to recover their shares of the defense costs. Netherlands denied liability and claimed that Travelers lacked standing to assert its declaratory judgment complaint. The trial court denied Netherlands’ motion to dismiss and declared that Travelers had standing. It also determined that the Netherlands had a duty to defend Lombardo and held that Netherlands’ “known injury or damage” exclusion was inapplicable. In holding the exclusion inapplicable, the court relied on the factual allegations in the underlying complaint, observing that the damage “potentially falls within the dates of Netherlands’ coverage” and “does not state with certainty when Lombardo became aware of the actual damage.” The court concluded that the “occurrence which triggered the duty to defend was the water intrusion into the law library.” A subsequent articulation allocated the risk and determined that Netherlands was obligated to pay 48.6% of the defense costs.

Netherlands appealed the trial court’s ruling arguing, among other grounds, that the trial court improperly (1) denied its motion to dismiss the declaratory judgment action; (2) concluded that the factual allegations in the underlying complaint constituted an occurrence; and (3) concluded that the “known injury or damage” exclusion did not preclude coverage. The Connecticut Supreme Court disagreed and affirmed the judgment of the trial court.

The Supreme Court addressed Netherlands’ claims that the trial court improperly concluded that the factual allegations in the underlying complaint constituted an occurrence and that the “prior

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This E-Blast is merely an overview intended to advise you of the key aspects of this new legislation. A review of the specific statutory requirements is required to ensure compliance. If you have any questions or would like assistance securing a lien under the revised law, please contact your attorney or a member of the Construction Law Group.

known occurrences” exclusion did not preclude coverage. Netherlands argued that a fair and comprehensive reading of the underlying complaint demonstrated that the property damage manifested prior to the inception of its policies in 2000 and that the alleged “water intrusion” would constitute a single occurrence which predated its time on the risk. Travelers responded that the property damage was caused by the continuing and progressive water intrusion that commenced after January 31, 1996 and was not the subject of repair work until February 14, 2008. Travelers further argued that the Netherlands’ policies do not require that the occurrence happen during the periods they cover; they require only that resulting “property damage” occur during those periods.

The Court agreed with Travelers and held that the underlying complaint alleged property damage within Netherlands’ policy period. The Court also held that Netherlands’ exclusion for prior known losses did not bar coverage for purposes of the duty to defend. The Court relied on the “four corners” rule to conclude that the factual allegations of the underlying complaint were broad enough to trigger the duty to defend.

The lesson for contractors is that when disputes arise, your insurance policies are valuable assets. You should give prompt notice to each insurer as to all policies that could potentially be implicated. If you have any questions, do not hesitate to reach out to a member of Murtha Cullina’s [Construction Law](#) or [Insurance Coverage](#) Practice Groups.