

WAS IT VANDALISM OR WAS IT THEFT?

by Terence J. Brunau and Marilyn B. Fagelson

Was it vandalism or was it theft? According to Connecticut District Court Judge Jeffrey Meyer, that was the \$2 million question in Mercedes Zee Corp., LLC v. Seneca Ins. Co., 2015 WL 9311343 (D. Conn. Dec. 22, 2015). Standard commercial property insurance policies – like the one at issue in Mercedes Zee Corp. – often include coverage for *vandalism* but not for *theft*, and courts nationwide have been struggling with how to discern between the two. The policy in Mercedes Zee Corp. covered “willful and malicious damage” to property, but excluded “damage caused by or resulting from theft.”

In Mercedes Zee Corp., intruders broke into the policyholder’s commercial building, which was vacant while undergoing renovations. They ripped apart walls, ceilings, floors, electrical and plumbing fixtures, and heating and cooling systems. They also stole copper piping located within the building. While the policyholder did not demand coverage for the stolen piping, which it agreed was excluded under the theft exclusion, it sought \$2 million for the extensive damages sustained to the building’s interior, arguing that coverage extended both to gratuitous vandalism and to vandalism done as part of both successful and unsuccessful attempts to steal something. The insurer argued that the policy excluded damages caused by *or resulting from* theft – even if such damages resulted from malicious or willful destruction of property. Judge Meyer disagreed with both parties.

As a matter of first impression under Connecticut law, Judge Meyer explained that, coverage depends on the intruders’ purpose and intent – but not only their *initial* intent. “What might start as an escapade by hooligans to vandalize a building may morph into a thieving spree as valuable items happen to be found; what might start as a burglary may morph into vandalism and vengeful destruction of property if no valuable items for the taking are found.” Reasoning that the intruders may have had *more than one* purpose at the time of intrusion, Judge Meyer ruled that an insurer cannot defeat a claim for coverage simply by showing that the intruders entered the building intending to steal.

Denying both parties’ motions for summary judgment, Judge Meyer concluded that the policy excluded both the value of the items stolen *and* the damage to the property that was necessary to

If you have any questions about the issues addressed here, please feel free to contact a member of our Insurance Recovery Group:

Terence J. Brunau
tbrunau@murthalaw.com

George A. Dagon, Jr.
gdagon@murthalaw.com

Michael J. Donnelly
mdonnelly@murthalaw.com

Marilyn B. Fagelson
mfagelson@murthalaw.com

Melissa A. Federico
mfederico@murthalaw.com

David P. Friedman
dfriedman@murthalaw.com

Rachel Snow Kindseth
rkindseth@murthalaw.com

Elizabeth J. Stewart
estewart@murthalaw.com

Ryan M. Suerth
rsuerth@murthalaw.com

Andrew G. Wailgum
awailgum@murthalaw.com

Kristen L. Zaehring
kzaehring@murthalaw.com

or in furtherance of the theft. However, Judge Meyer also held that the policy does extend coverage to damage resulting from an act of *attempted but unsuccessful* theft. As a result, an item-by-item review of the lost and damaged property was required to determine whether a specific loss was the result of vandalism or theft.

Click [here](#) for a link to the full opinion.

If you have any questions about the information contained in this Alert, please contact Terence J. Brunau at 203.772.7785 or tbrunau@murthalaw.com or Marilyn B. Fagelson at 203.772.7725 or mfagelson@murthalaw.com.