

Client Alert

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South Carolina Supreme Court's Interpretation of an "Occurrence" Affords Expansive Scope of Coverage Under General Liability Policies

The Supreme Court of South Carolina in *Auto-Owners Insurance Co. v. Rhodes*, No. 2009-143546 (S.C. Sept. 25, 2013) recently held that coverage extended not only to property damaged as an immediate result of an accident, but also to subsequent damage. Although the decision concerned the treatment of a perhaps pedestrian incident, it may have broad implications concerning the scope of damages covered by general liability policies. In particular, the court rejected the argument commonly made by insurers that damage caused by an "occurrence" must be immediate and does not extend to consequential damages. As such, it rejected the attempt by insurers to limit coverage to immediate, non-consequential damages.

Background

In 1999, Samuel Rhodes engaged Marion Eadon and C&B Fabrication to design, fabricate, and erect three outdoor advertising signs on property owned by Rhodes. Approximately 10 months following the installation of the signs, the middle sign was discovered leaning toward Interstate 77. Soon after, one of the other signs fell across I-77, blocking traffic. The South Carolina Department of Transportation (SCDOT) investigated the incident, ordered Rhodes to remove all three signs, and revoked Rhodes' permits to maintain signs on that property in the future. Rhodes brought suit against Eadon, alleging damages and lost income resulting from Eadon's negligent design of the signs and the revocation of Rhodes' permit to place signs on his property. While the tort action was pending, Auto-Owners, Eadon's CGL insurer, commenced a declaratory judgment action seeking a declaration of no coverage because, among other things, there had been no "occurrence" as defined in the policy.

On November 7, 2006, the trial court found that Auto-Owners was obligated to indemnify Eadon, finding that the sign falling on the interstate highway constituted an "occurrence" causing damage to third-party property. The court further found that the loss of use of the remaining two signs and the consequential damages flowing therefrom were causally linked to the sign that fell, thus also constituted property damage caused by the occurrence. Auto-Owners appealed, contending that the court erred in finding that the removal of the other two signs was part of the "occurrence" that arose out of the accidental collapse of the first sign. Instead, Auto-Owners argued that their removal was caused by SCDOT's decision to revoke the use permit, or alternatively, that the alleged damages sustained arose out of the insured's own faulty workmanship.

Holdings

The Supreme Court of South Carolina rejected the insurer's contentions and held that the fallen sign and the removal of the remaining two signs together should be viewed under a single "continuum of an 'occurrence.'" In reaching this conclusion, the court broadly construed the policy term "occurrence" as including both the fall of the first sign and the consequential loss of the other two signs, which was due to "continuous or repeated exposure to substantially the same general harmful conditions." The court reasoned that the fallen sign and the subsequent removal of the remaining signs were causally linked, albeit tangentially, as the removal of the two remaining signs would not have occurred "but for" the fall of

the first sign. The court also noted that because all three signs had been erected together and were of similar construction, the loss of the signs could be viewed as a single occurrence with progressive damage.

Implications

Auto-Owners demonstrates that coverage is not limited to direct damage to third-party property, but extends as well as consequential and future economic damage. The decision stands, therefore, as a significant reminder that coverage may be available not only for the more obvious damage that is immediately identifiable after a loss event, but also for damage that occurs later in time and which, “but for” the initial accident, would not have been sustained. The decision is also the latest among a line of appellate decisions to support policyholders seeking coverage for damage resulting from faulty workmanship, where the damages arise out of unexpected and fortuitous circumstances and are attributable to damage to property other than the defective or faulty work.

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