

OREGON LAW UPDATE

Ambiguous Homeowners' Policy Construed Against the Insurer in Case Involving Landslide Damages

From the Desk of Jeff Eberhard: This case showcases the importance of using clear language in policy drafting to avoid any contradictory or ambiguous provisions.

Claims Pointer: In Oregon, ambiguities in policy language are construed against the drafter of the policy. A landslide resulting in a neighbor's car coming into contact with an insured's home triggered two competing provisions of a homeowner's policy: one excluding coverage for damages caused by "collapse", and the other granting coverage caused by a motor vehicle. With two reasonable but conflicting interpretations of the policy, the policy was construed against the insurer, and coverage was found for the damage.

case in point ...

Yuan Chou v. Farmers Insurance Exchange, in the Court of Appeals of the State of Oregon, 253 Or App 552, ---P.3d-- (November 21, 2012).

On the morning of October 8, 2008, Yuan Chou and Siukee Tong (hereinafter, "Chou") awoke to a cracking sound coming from outside their house. The cracking noise was coming from an uphill neighbor's house, including the home's contents and cars, sliding down an embankment and into the Chou home. Chou sought coverage under their homeowners' insurer, Farmers, for the resulting damages. Farmers denied coverage based on the policy exclusion for property damage caused by "collapse." Chou filed a motion for summary judgment arguing that their damages were not caused by collapse, but instead by their neighbor's colliding with their home. Damage to the Chou home caused by a vehicle was covered under the policy. The Chou summary judgment motion was granted, and at trial the jury awarded damages to Chou. Farmers appealed.

The Court of Appeals found that the policy was ambiguous in that there were two reasonable yet conflicting interpretations of the Chou policy: (1) losses caused by the neighbor's vehicle is covered; and (2) losses caused by the collapse of the uphill

property is not covered. Further, the court was not persuaded by Farmer's argument that the "concurrent cause" provision of the policy precluded coverage. This provision states that loss or damage stemming from excluded causes is not covered "regardless of any...other events which aggravate or contribute concurrently or in any combination or sequence with the excluded cause of the loss or damage."

The Court of Appeals construed the policy against Farmers, the drafter of the policy, and found that the trial court did not err in granting the Chous' motion for summary judgment.



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