

## West Bend Mutual Ins. Co. v. New Packing Co. Inc.

Year: 2011

Court: Appellate Court of Illinois, First Judicial District

Case Number: No. 11-1507

Insured bought a building into which it intended to move and transfer its operations. The insured promptly added the building to its existing insurance policy, effective the date of the closing. Within the first 3 weeks of ownership, the building was vandalized on 2 occasions. The insurer denied the claims on the basis of an exclusion for damage caused by vandalism if the property was vacant for 60 consecutive days before the loss. The insurer counted the 60 days to include the period of time prior to the insured owning the building and insuring it. The trial court granted summary judgment in the insured's favor, concluding that the 60-day period did not start until it owned the building and obtained insurance. Thus, the exclusion was help inapplicable. UP weighed in for the insured, pointing out that the vacancy exclusion can only logically apply to the time period during which the policy was in effect. On appeal, the appellate court affirmed, but on a different basis. It agreed with the insurer that you count the 60 days backwards, even if the insured did not own the building, but concluded that the insurer could not rely on the exclusion because it had the opportunity to inspect before insuring to determine its condition, including whether it was vacant. In other words, you cannot insure a vacant building and then argue vacancy as a bar to coverage for a loss. The court held (oddly) that you can count the 60 days to include the time that the insured does not even own the building, but issued an unpublished opinion with no precedential value. The insurer paid the claim, so for the insured/policyholder it was a good result.

This brief was written pro bono by Mark DeBofsky, Debofsky, Daley & Bryant