

Court rules Admiral Insurance may be liable for faulty construction damages under CGL policy

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In a decision that could reshape how insurance carriers assess liability for construction defects, the Oregon Supreme Court ruled on April 17 that coverage under a commercial general liability policy may apply even when claims arise from breach-of-contract allegations – so long as the underlying facts support a potential claim in tort.

The ruling, in *Twigg v. Admiral Insurance Company*, reverses a lower court’s decision that had barred recovery under a CGL policy on the grounds that the damage stemmed solely from a contractual breach.

The case began when Weston and Carrie Twigg hired Rainier Pacific Development LLC in 2011 to build a home on a sloped property in Oregon. After moving in, the Twiggs identified multiple construction defects, including a garage floor that cracked and sloped inward, directing water toward the house. A settlement followed. Under a “Repair Agreement,” Rainier was to reconstruct the garage floor with precise engineering standards, including a required slope, waterproofing, and structural approval.

To fulfill its obligations, Rainier brought in a subcontractor to apply a lightweight concrete overlay product called Ardex. But the application did not follow the manufacturer’s specifications. Crucially, it failed to preserve the existing control joints – a detail the manufacturer warned could result in cracking or disbonding. The Twiggs’ architect later performed a sounding test on the garage floor and found hollow voids between the new layer and the original slab.

When the couple reinitiated arbitration, they claimed breach of the Repair Agreement. The arbitrator agreed, finding that Rainier’s work had been defective and contrary to the Ardex manufacturer’s

instructions. The award: \$150,000, attributed to the cost of correcting the garage slab.

Unable to collect the judgment from Rainier, the Twiggs turned to Admiral Insurance Company, which had issued Rainier a CGL policy effective during the repairs. Admiral denied coverage. Its argument: the award stemmed from breach of contract and therefore didn't fall under the policy's definition of an "occurrence."

The CGL policy in question limited coverage to damages caused by an "occurrence," defined as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." The policy did not define the term "accident."

Relying on prior Oregon case law – most notably *Oak Crest Construction Co. v. Austin Mutual Insurance Co.* – Admiral maintained that damages resulting from a contractual obligation did not arise from an "accident." Both the trial court and the Oregon Court of Appeals agreed.

But the Supreme Court saw it differently.

Writing for the Court, Justice DeHoog said that while *Oak Crest* stands for the proposition that damages "solely" caused by a breach of contract are not covered, it does not require a tort to be pleaded in order for coverage to apply. The Court clarified that an "accident" in the insurance context can include unintended property damage resulting from conduct that, although grounded in contract, also supports a theory of liability under tort law.

"Whether property damage is the result of an 'occurrence' depends not on whether an insured has been sued in tort," the Court wrote, "but on whether, by causing property damage, the insured breached a duty imposed by law, and not one solely arising from contract."

In reversing summary judgment for Admiral, the Court emphasized that the record presented genuine issues of material fact. Evidence submitted to the arbitrator – including expert analysis, installation guides, and video demonstrations – supported the conclusion that the Ardex application was performed negligently. According to the Court, this raised a plausible factual basis for tort liability, which in turn could trigger coverage under the CGL policy.

The ruling underscores the Oregon Supreme Court's continued use of the interpretive framework laid out

in *Hoffman Construction Co. v. Fred S. James & Co.* Under that framework, where a policy term like “accident” is ambiguous, the ambiguity must be resolved against the insurer. Both Admiral and the Twiggs offered plausible definitions of “accident,” the Court said. As a result, the clause had to be construed in favor of coverage.

The decision stops short of requiring Admiral to indemnify Rainier Pacific. It merely sends the case back to the trial court to determine whether the facts, as developed, support tort-based liability and thus a covered occurrence.

Still, for insurers and policyholders alike, the opinion clarifies a key question that surfaces frequently in construction-related litigation: Can an insurer deny coverage simply because a claim is framed as a breach of contract? In Oregon, at least, the answer is now clearly no – courts must examine the conduct and the resulting harm, not just the legal theory.

Emily S. Miller of Miller Insurance Law LLC represented the Twiggs. Admiral was represented by Jacqueline Tokiko Mitchson of Bullivant Houser Bailey PC. The case attracted significant attention from the construction and insurance industries. Amicus briefs were submitted by United Policyholders, the Oregon Trial Lawyers Association, Central City Concern, and several trade associations, including the Associated General Contractors, Oregon-Columbia Chapter, the American Subcontractors Association, and the National Association of Minority Contractors.

The decision, formally cited as *Twigg v. Admiral Insurance Co.*, 373 Or 475 (2025), is expected to serve as a reference point in future coverage disputes involving faulty workmanship, particularly where contractual and tortious duties intersect.