

## **Seventh Circuit Finds Coverage for Insured Contractors That Built Defective Homes**

### ***Insurance Law Update***

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### ***U.S. Court of Appeals for the Seventh Circuit***

In *Trinity Homes LLC v. Ohio Cas. Ins. Co.*, \_\_\_ F.3d\_\_\_, 2010 WL 5174967 (7th Cir. (Ind.) December 22, 2010), the U.S. Court of Appeals for the Seventh Circuit considered whether faulty subcontractor work was “property damage” caused by an “occurrence” under commercial general liability (CGL) policies issued to plaintiffs by Ohio Casualty, and whether underlying settlements for partial limits constituted “exhaustion” under umbrella policies issued by Cincinnati Insurance Company (CIC). The district court granted summary judgment in favor of Ohio Casualty and CIC on these issues, but the Seventh Circuit Court of Appeals reversed.

In reviewing the first issue, the court considered *Sheehan Construction Co. v. Cont'l Cas. Co.*, 935 N.E.2d 160 (Ind. 2010), an Indiana Supreme Court case that had not yet been decided at the time the district court granted summary judgment. That case made it clear that a standard CGL policy covers a subcontractor’s *unintentional* shoddy workmanship. Thus, the court reversed the summary judgment for Ohio Casualty in light of the new precedent.

Regarding the exhaustion issue, the court determined that the CIC policy was ambiguous because it did not state that the underlying limits had to be fully paid by the underlying carrier in order to be exhausted within the meaning of the policy. The court distinguished cases from other jurisdictions in which the policies at issue provided that coverage was not triggered unless the underlying insurer made a full policy limit payment, and, in the absence

of relevant Indiana law, adopted the position of the Second and Third Circuit Courts of Appeals in finding that exhaustion of a primary policy limit can be accomplished through a settlement where the primary insurer pays some of the limit and the insured pays the remainder, as long as the policy does not provide otherwise.

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