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Insurance Coverage Decisions: Issued Today - Impact Tomorrow



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Texas Supreme Court: Injury-in-Fact Trigger Applies to Construction Defect

Court Rejects Manifestation Trigger

Earlier today the Texas Supreme Court issued its decision in the closely watched case of *OneBeacon Insurance Company v. Don's Building Supply, Inc.* At issue, trigger of coverage under Texas law for a construction defect (EIFS) claim. The court answered a Certified Question from the 5th Circuit. The court summarized the question and its answer as follows:

“More specifically, is an insurer’s duty to defend triggered where damage is alleged to have occurred during the policy period but was inherently undiscoverable until after the policy expired? As to this policy, which focuses on when damage comes to pass, not when damage comes to light, we answer “yes”—the insurer’s duty is triggered under Texas law; **the key date is when injury happens, not when someone happens upon it.**” (emphasis added).

Basing its decision on the policy language, the court stated:

The policy says as much, defining property damage as “[p]hysical injury to tangible property,” and explicitly stating that coverage is available if and only if “‘property damage’ occurs during the policy period.” So in this case, property damage occurred when a home that is the subject of an underlying suit suffered wood rot or other physical damage. The date that the physical damage is or could have been discovered is irrelevant under the policy.

Thus, policies would be triggered starting from the occasion of the first penetration of moisture behind the EIFS, which the plaintiffs alleged was within six months to one year after the application of the EIFS.

The opinion is not lengthy, but it has much to say, concerning trigger theories in general, rejection of the manifestation trigger and just what does a manifestation trigger really mean.

A copy of *OneBeacon Insurance Company v. Don's Building Supply, Inc.* can be accessed here:

<http://www.supreme.courts.state.tx.us/historical/2008/aug/070639.pdf>

Please let me know if you have any comments or questions.

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