

California Court Rules That Faulty Construction Suit Arose Out Of Multiple Occurrences

05.27.20



(Article from *Insurance Law Alert*, May 2020)

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A California federal district court ruled that a construction defect lawsuit arose out of three separate occurrences, requiring the policyholder's payment of three deductibles and rejecting the assertion that the claims arose out of a single negligent supervision occurrence. *Liberty Mut. Fire Ins. Co. v. Bosa Dev. Cal. II, Inc.*, 2020 WL 1864645 (S.D. Ca. Apr. 13, 2020).

Bosa, the developer of a condominium project, was named as a defendant in a lawsuit alleging various construction defects. Liberty Mutual defended Bosa and ultimately paid the \$4 million aggregate limit to settle the claims. However, Liberty argued that Bosa was responsible for the payment of multiple deductibles, based on its assertion that the lawsuit arose out of several distinct occurrences. In response, Bosa contended that its allegedly negligent supervision of the project constituted one occurrence, triggering only a single \$500,000 deductible payment.

Applying California's cause-oriented test for determining the number of occurrences, the court concluded that there were three occurrences, arising out of three discrete events that caused damage: (1) the allegedly defective installation of exterior concrete structures; (2) the allegedly defective installation of interior plumbing and HVAC systems; and (3) the allegedly negligent selection of materials. The court explained that this conclusion was supported by the fact that different subcontractors worked on each of these distinct areas of the project, and that each "occurrence" resulted in a qualitatively different type of damage. Rejecting Bosa's single-occurrence assertion based on negligent supervision, the court stated that "such an interpretation would mean that there would never be more than a single occurrence in the course of a single construction project, no matter how disparate the harms."

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