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W. Hills Dev. Co. v. Chartis Claims, Inc. Oregon Auto. Ins. Co.,
360 Or. 650, 385 P.3d 1053 (2016)

Significance for Seminar Discussion

An additional insured's (e.g., general contractor or developer) ability to obtain defense coverage from a subcontractors' liability insurer is much easier after *West Hills*.

Summary

The *West Hills* court considered whether additional insured defense coverage was triggered under a CGL policy that extended additional insured coverage only to the extent that liability arose out of the named insured's "ongoing operations." In finding that additional insured defense coverage had been triggered, the Oregon Supreme Court rejected the insurer's argument that the duty to defend did not trigger unless and until the complaint affirmatively "rules in" coverage. In so holding, the court reaffirmed the standards set forth in *Bresee Homes, Inc. v. Farmers Ins. Exch.*, 353 Or. 112, 117, 293 P.3d 1036, 1039 (2012): "[T]he question is whether, '[r]egardless of the presence of ambiguity or unclarity in the complaint, * * * the court can reasonably interpret the allegations to include an incident or injury that falls within the coverage of the policy.'"

Although the complaint did not refer to the subcontractor by name, the court found that the allegations that the additional insured general contractor was liable for improper work performed by unnamed subcontractors could reasonably be interpreted to allege that the additional insured was liable for work performed by the named insured. With respect to the "ongoing operations" limitations, the court avoided deciding whether the property damage must have occurred before the subcontractor completed its work to trigger coverage. The court found such an inquiry unnecessary because the complaint's allegations were ambiguous as to when damage occurred.

Of note, the court reached this result within the four-corners rule and expressly declined to decide whether *Fred Shearer & Sons, Inc. v. Gemini Ins. Co.*, 237 Or.App. 468, 240 P.3d 67 (2010), *rev. den.*, 349 Or. 602, 249 P.3d 123 (2011), was correctly decided.