

Finding Ambiguity, Nevada Court Rules That Per-Occurrence Limit Does Not Apply To Policy Endorsement

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A Nevada federal district court ruled that a policy was ambiguous as to whether a coverage endorsement was subject to the policy's per-occurrence limit and thus construed the ambiguity against the insurer. *AIG Specialty Ins. Co. v. Liberty Mutual Fire Ins. Co.*, 2018 WL 1245488 (D. Nev. Mar. 9, 2018).

A hotel owner sued its contractors for property damage caused by construction defects. The contractors was insured under a primary policy issued by Liberty and an excess policy issued by AIG. Liberty tendered its \$2 million per-occurrence limit, arguing that the property damage was caused by a single occurrence. AIG sought a declaration that there were multiple occurrences, and thus that its policy was not implicated until Liberty paid its \$4 million aggregate limit. AIG additionally argued that a contractor's rework endorsement in the Liberty policy, which provided coverage for the underlying claims, was not subject to the per-occurrence limit. The court agreed with this assertion and granted AIG's summary judgment motion.

The court concluded that Liberty's policy was ambiguous as to whether the contractor's rework endorsement was a separate insuring agreement that is not subject to the per-occurrence limit, or alternatively whether it was a modification to the coverage set forth in Coverage A (which relates to coverage for "property damage"), and thus subject to the per-occurrence limit. In finding ambiguity, the court noted that the endorsement did not refer to "occurrence" and did not indicate that it was replacing any provision within Coverage A. Further, the endorsement contained its own insuring agreement that did not define coverage with reference to "property damage" and had its own exclusions. The court acknowledged that "it may be a reasonable construction of the policy to conclude that the endorsement is just another form of 'property damage' that is subject to the per occurrence limit," but held that the ambiguity must be construed against Liberty, as the drafter of the policy.

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