

California Appellate Court Rules That Intentional Acts That Cause Unintended Harm Are Not Covered Occurrences Under Property Policy (Insurance Law Alert)

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A California appellate court ruled that a homeowner was not entitled to coverage under a property policy for losses stemming from the intentional removal of trees based on her mistaken belief that the trees were located on her property. *Ghukasian v. Aegis Security Ins. Co.*, 2022 WL 1421511 (Cal. Ct. App. Apr. 14, 2022).

The policyholder hired a contractor to remove trees that she mistakenly believed to be on her own property. Her neighbors sued, alleging trespass and negligence. The insurer denied coverage on the ground that the underlying suit alleged only intentional conduct. In the ensuing litigation, a trial court granted the insurer's summary judgment motion, finding no allegations of a covered "occurrence," and alternatively that several policy exclusions barred coverage.

The appellate court affirmed, explaining that the tree removal and land leveling were intentional actions, regardless of the policyholder's mistaken beliefs about property boundaries. The court rejected the policyholder's contention that *Liberty Surplus Ins. Corp. v. Ledesma & Meyer Construction Co.*, 5 Cal. 5th 216 (2018), in which the California Supreme Court held that a negligent hiring suit stemming from an employee's molestation of a third party may allege a covered occurrence, was controlling. The court explained that in *Liberty Surplus*, the causal chain that led to injury began with the employer's alleged negligent act of hiring the employee, whereas here, the immediate cause of damage was the policyholder's intentional action of tree removal. In addition, the court emphasized that *Liberty Surplus* "contain[ed] no language indicating it intended to overrule prior caselaw holding that intentional acts are not 'accidents' merely because the insured did not intend to cause injury." Finally, the court deemed it irrelevant that the underlying suit alleged a cause of action sounding in negligence, noting that the insurer's duty to defend turns on the facts alleged in the underlying complaint, not the labels of the causes of action.

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