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California Supreme Court declines to limit "under construction" exception to vacancy exclusion to new construction

By Samuel H. Ruby

TRB Investments, Inc. v. Fireman's Fund Ins. Co., --- Cal. Rptr. 3d --- (2006), 2006 WL 3257848

In a unanimous decision, the California Supreme Court has held that in the context of an exception to a vacancy exclusion, the phrase "under construction" may encompass not only new construction but also renovation of existing structures, so long as there are "substantial continuing activities" on the premises at the time of loss.

The case involved water damage to an existing building that was unoccupied but in some stage of interior renovation. The insurer denied coverage, based on a vacancy exclusion. Relying on the exception to the exclusion for property "under construction," the insured sued. The trial court granted summary judgment for the insurer, holding that "under construction" meant only construction of a new building. The Court of Appeal affirmed, but the Supreme Court reversed.

Purporting to examine the meaning that a layperson would ascribe to "construction," the court actually relied on technical definitions in several statutes and regulations for the conclusion that "construction" includes renovations. The court also determined that a broad interpretation was necessary to harmonize the exclusion with the policy's cancellation provisions and avoid a potential "anomalous result." However, the court remanded the case for further development of evidence because the record did not indicate whether there were in fact "substantial continuing activities" on the premises at the time of loss.