



## **Duty to Defend Triggered by Extrinsic Evidence Showing Insurer-Insured Relationship Existed**

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Earlier this month, the Oregon Court of Appeals issued another decision that rejects a rigid application of the four-corners rule to determining the duty to defend. Previously, in *Fred Shearer & Sons, Inc. v. Gemini Ins. Co.*, 237 Or App 468, 476, 240 P3d 67 (2010), rev den, 349 Or 602 (2011), the Court of Appeals held that extrinsic evidence could be used to address "the preliminary question: whether the party seeking coverage was actually an insured within the meaning of the policy." In *West Hills Development Co. v. Chartis Claims, Inc.*, the Court of Appeals relied on extrinsic evidence to conclude that the duty to defend was triggered for an additional insured.

In *West Hills*, a homeowners association sued a general contractor for alleged construction defects. The insurer of a subcontractor on the project rejected the tender of defense by the general contractor on the grounds that the association's complaint did not identify the subcontractor, allege any improper work by the subcontractor, or specify that damages occurred during the subcontractor's ongoing operations for the general contractor.

The Court of Appeals held that if an injured claimant can recover under the allegations made in the complaint upon any basis for which the insurer affords coverage, that insurer is obligated to defend the insured. On the facts presented, the Court of Appeals concluded that the complaint alleged that the general contractor negligently supervised its subcontractors, and the alleged defects resulted from the negligent supervision. Thus, the complaint alleged facts which, if proved, could subject the general contractor to liability for work by a subcontractor. Although the complaint did not identify the subcontractor, the Court of Appeals held that extrinsic evidence could be considered in order to identify the subcontractor and put the insurer on notice that its duty to defend the general contractor (additional insured) had been triggered.