

## **Faulty Construction Problems Were Known Loss, Ill. Court Holds**

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### **Body**

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A liability carrier has no duty to defend or indemnify construction defect claims under a policy which was purchased after notice of the defects was given to the insured, an Illinois judge ruled on May 23 (United National Insurance Co. v. Lenny Szarek Inc., et al., No. 95 LA 242, Ill. Cir., 19th Jud. Dist., McHenry Co.).

(Order in Section B 03-020604-102Z )

According to a source, the insured, Lenny Szarek Inc., a home construction business, was hired to construct a residential development in a suburb of Chicago. Szarek thereafter received complaints about construction defect problems and was sued in connection with the defects.

Szarek subsequently purchased liability insurance from United National Insurance Co.

United National sued Szarek, various subcontractors involved in the construction project and claimants in the 19th Judicial Circuit for McHenry County. In a motion for summary judgment, United National averred that Szarek was aware of the faulty construction problems prior to purchasing insurance and thus, the losses for which Szarek sought coverage were barred under the known loss doctrine.

The parties also filed summary judgment motions on the duty to defend.

#### **Motions Granted**

Circuit Judge Michael J. Sullivan granted the insurer's motion for summary judgment on known loss, stating, "Prior to the purchasing of the United National Policy, which became effective on May 23, 1994, Lenny Szarek Inc. knew or had reason to know there was a substantial probability that it would suffer or had already suffered the loss that is the subject of the [underlying] litigation . . . ."

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Granting summary judgment to the insurer on the duty to defend, he ruled that Szarek had not demonstrated that either an "occurrence" or "property damage" or the possibility of such had occurred during the policy period related to the work from which the underlying suits arose.

He further ruled that the insurer has no duty to indemnify Szarek for any claims, judgments or settlements in the underlying suits and does not owe any contribution toward any award of sanctions or punitive damages which may be entered against Szarek in the underlying suits.

The insurer had argued that there was no "property damage" where economic loss does not constitute "property damage" under Illinois law and that faulty construction is not an "occurrence," a source said.

Furthermore, subcontractors The Zale Group Inc., Zale Enterprises Inc., R.A. Drywall and Salvatore Parenti & Co. are not named insureds under the policy, and are, thus, not entitled to a defense or indemnification of the suits at issue, the judge held.

Robert J. Franco, Richard M. Kuntz and David N. Larson of Bollinger, Ruberry & Garvey in Chicago represent the insurer. Terrence F. Guolee and Jessica Ryan of Fraterrigo, Beranek, Feiereisel & Kasbohm of Chicago and David LeSueur of Diamond & LeSueur of McHenry, Ill., are the attorneys for the insured.

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