

EIGHTH CIRCUIT AFFIRMS TRAVELERS DOESN'T OWE \$1.4M FOR WALL FAILURE

Missouri - Watters Wolf Bub Hansmann

A Missouri property developer can't recover from Travelers \$1.4 million for lost rental income and soft costs after a retaining wall failure caused delays at an apartment construction project, the Eighth Circuit ruled Monday.

Affirming Travelers Property Casualty Co. of America's summary judgment win, a three-judge panel concluded that the policy Travelers issued to builder Ben F. Blanton Construction Inc. provided a narrower scope of coverage to the project developer, BCC Partners LLC, that did not include lost rental income and soft costs.

"Because BCC's breach of contract claim fails, and Travelers thus has no duty to cover BCC's alleged losses, BCC's claim for vexatious refusal to pay necessarily fails as well," U.S. Circuit Judge Raymond W. Gruender wrote in the court's opinion.

The coverage dispute stems from the construction of The Vue at Creve Coeur, a 182-unit apartment complex in the greater St. Louis area, according to court filings.

After a retaining wall on site failed, BCC, Blanton and other subcontractors wound up in arbitration, where BCC ultimately recovered more than \$7.2 million from Blanton. The builder subsequently filed for bankruptcy and sued Travelers to recover costs of removing and replacing the failed retaining wall, which resulted in a \$332,000 verdict in Blanton's favor.

BCC also sought additional insured coverage under the Travelers policy for loss of rental income and soft costs following the retaining wall failure. While Travelers advanced \$200,000 to the developer, the insurer later denied coverage and reserved the right to recover payment.

The developer sued Travelers in August 2022, asserting claims for breach of contract and vexatious refusal to pay under Missouri law. U.S. District Judge Rodney W. Sippel granted summary judgment in favor of the insurer in March 2024, finding that BCC was not entitled to payments under the policy.

The panel on Monday rejected BCC's contention that the terms "you" and "your" in the provision stating that the policy provides coverage for "your" loss of rental income or soft costs encompasses additional named insureds, saying the policy specifically states that the terms only refer to the named insured.

"Reading the policy 'as a whole,' the plain language of the policy does not conform to BCC's preferred reading, nor is it ambiguous," Judge Gruender said. "Additional named insured' is a separate defined term in the policy with a specified scope of coverage that is different from that of the named insured."

In response to BCC's argument that it does not make sense to read the policy in a way that only provides lost rental income and soft costs to Blanton, when the builder would not incur those types of losses, the panel acknowledged "the possibility that BCC, and perhaps even Travelers, anticipated that BCC would be covered for lost rental income and soft costs."

Under Missouri law, if the terms of an insurance policy are clear and unambiguous, it must be enforced as written, Judge Gruender said, adding that the policy is clear that BCC is an additional insured and additional insureds are not covered for lost rental income and soft costs.



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