TRAUB LIEBERMAN

NEWS & EVENTS

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US Law Magazine Article: “Rip and Tear” Claims: The CGL Policy as Performance Bond

BY:

Courts nationwide have grappled with coverage for “rip and tear” claims like the one against Zappo in the hypothetical below. The purpose of this article is to introduce and discuss the key concepts and rationales courts employ when addressing such claims, apply them to the hypothetical, and to ask whether modern trends in this area risk transforming the CGL policy into a performance bond.

THE HYPOTHETICAL

Zappo Electrical Contracting Corp. wired the new student union building at State University, including laying wire under the computer lab. After the wiring was completed, other trades closed the walls and put down a beautiful terrazzo floor, covering the wires. Later, the furniture and computer equipment were moved in, but the computers would not boot up. After a round of nondestructive testing, it was discovered that something was wrong with the wiring, now hidden by the beautiful terrazzo floor. State University demanded that Zappo fix the wiring or face legal action. Zappo would have to break through the floor to fix the wiring, however.

Zappo forwarded State University’s demand to its liability insurer. Jim Juster, the claims professional, was pretty certain that there was no coverage for Zappo’s faulty workmanship. After all, a liability policy is not a performance bond! What got Jim scratching his head, though, was the damage to the terrazzo floor. The floor was third-party property being damaged due to the Zappo’s fault. Could that portion of State University’s claim possibly be covered?

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