

ALERT

Court Holds that Property Damage Exclusion Does Not Bar Claim for Title-Search Malpractice

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Applying Connecticut law, the Appellate Court of Connecticut held that a professional liability policy's exclusion for claims for destruction of "tangible property" did not bar a plaintiff's claim that her attorney's alleged negligence resulted in her acquiring title to property subject to encumbrances that required it to be demolished by the city. *Shaw v. Freeman*, 2012 WL 653821 (Conn. App. Ct. Mar. 6, 2012).

The plaintiff retained the insured attorney to represent her in the purchase of a parcel of real property. The attorney obtained a title insurance policy identifying certain encumbrances placed on the property by the city in which it was located, which required that the building on the property be destroyed, but did not advise the plaintiff of the encumbrances. After the plaintiff purchased the property, the city demolished the building and billed the plaintiff, as owner, for the costs of the demolition. The plaintiff sued the attorney for negligence, recklessness and emotional distress, seeking as damages the costs of the demolition, the resulting diminution in the property's value, and compensation for emotional distress.

The insurer denied coverage based on policy exclusions for claims arising from (i) the destruction of tangible personal property, and (ii) bodily injury, including emotional injury, except for emotional injury resulting from "personal injury." The policy defined "personal injury" as injury resulting from certain specified wrongful acts, which did not include negligence or recklessness.

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The court agreed with the plaintiff that her negligence claim was not barred by the exclusion for destruction of tangible personal property because, while she sought damages related to the destruction of property, her claim “emanate[d], not from destruction of property by the defendant, but rather from the defendant’s failure to adequately review the title policy and search the land records in preparation for the transfer of the property.” The court also held that the emotional distress claims were excluded by the bodily injury exclusion because the plaintiff did not allege a wrongful act that fell within the policy’s definition of personal injury. The final claim, for “reckless and wanton conduct,” was also unsupportable, the court concluded, since it simply relabeled the factual allegations of the plaintiff’s negligence claim.