



February 2, 2017

Contact:
John S. Na
Senior Associate
213.417.5179
jna@mpplaw.com

Potential of Ongoing Damage Triggers Duty to Defend

A California Court of Appeal found that the potential of ongoing damage to wood inside a chimney was sufficient to trigger coverage for a resulting fire that occurred after the liability policy had expired.

Tidwell Enterprises, Inc. et al. v. Financial Pacific Insurance Company
(Third District Court of Appeal of California, November 29, 2016)
6 Cal.App.5th 100

Tidwell installed a fireplace during the construction of a new home in 2006. Five years later, in 2011, the home was damaged by a fire determined to have been caused by defects in the manufacture, design or installation of the fireplace. Financial Pacific had insured Tidwell under a standard CGL policy that expired 20 months prior to the fire. State Farm, which insured the home, paid for the resulting fire damage and sued Tidwell, alleging that Tidwell had negligently installed the fireplace system in the home. Tidwell tendered the suit to Financial Pacific, which concluded that the property damage occurred after its policy expired and denied coverage. In the ensuing coverage action filed by Tidwell against Financial Pacific, the trial court granted Financial Pacific's motion for summary judgment, finding that the property damage from the fire occurred after its policy expired. Tidwell appealed and the Court of Appeal reversed. The Court held that although the fire may have occurred in 2011, Financial Pacific could not rule out the possibility that there was ongoing damage (during one or more of Financial Pacific's policy periods) to the wood inside the chimney, every time the fireplace was lit, which eventually resulted in the 2011 fire.

To view the opinion, click [HERE](#).

This article is designed to provide information in regard to the subject matter and may not reflect the most current legal developments, verdicts or settlements. This information is made available with the understanding that the article does not constitute the rendering of legal advice or other professional services. If legal advice is required, such services should be sought. ©2017 Morris Polich & Purdy LLP. All rights reserved.

www.mpplaw.com