

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Adam Webber at arwebber@green-law.com.

Court of Appeals: Eleventh District

Case Name: Acuity Mutual Insurance Co v. Interstate Construction, 2008-Ohio-1022

Decided: March 7, 2008 (posted March 10, 2008)

Issue(s): Waiver of Subrogation Provisions in Construction Contracts

Summary of Opinion: Acuity's insured, BVM Hospitality, entered into a contract with Interstate Construction to build a hotel. Interstate Construction was the general contractor. When water pipes at the hotel froze in 2002, Acuity paid BVM \$58,000 as a result of the damage. Two years later, water pipes again froze and burst, and as a result of this loss, Acuity paid BVM \$201,000. Acuity alleged that Interstate breached its contract with BVM by failing to follow the building contract's specifications.

Interstate argued that Acuity's claim was barred by a waiver of subrogation provision contained in the contract. Acuity argued that the waiver provision did not apply to the burst pipes because the incident occurred **after** the completion of the contract. The contract's provision in question provided that BVM and Interstate waived all rights against each other for any damage, whatever the cause, to the extent the damage would be covered by property insurance, whether the construction and services were partial or complete.

The court held that subrogation clauses are controlled by the usual rules of contract interpretation and that courts must use the plain language of the contract to determine the parties intent. The court also noted that Ohio courts have repeatedly held that waiver-of-subrogation provisions are valid and enforceable. The court held that the contract between BVM and Interstate required that BVM obtain property insurance to be solely responsible for any damages from defects in the construction services, ***whether completed or partially completed***. The court held that this waiver of subrogation survived the completion of the contract and effectively barred BVM, or its insurer-subrogee, from holding Interstate responsible for damages resulting from construction defects.

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As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate court decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.

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