

Asbestos Exclusion/Insurance Policy: Federal Court Addresses Coverage Issue Involving School Renovation



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The United States District Court (W.D. Washington) (“Court”) addressed in a December 14th Order whether a contractor performing, or having performed by a subcontractor, renovation work at a school had insurance coverage for allegedly causing damages. See *The Charter Oak Fire Insurance Company et al. v. Chas. H. Beresford Co., Inc.* 2021 WL 5911995.

The question involved whether an asbestos exclusion in the contractor’s insurance policy excluded coverage.

The Northshore School District (“Northshore”) hired Charles H. Beresford Co, Inc. (“Beresford”) to undertake flooring replacement and upgrades to a school’s bathrooms. Beresford is stated to have performed the flooring work and subcontracted the bathroom work to Cobra Construction Company (“Cobra”).

Cobra allegedly:

. . . improperly and negligently disturbed asbestos containing materials (“ACM”) in the bathroom wall cavities of the school, and in doing so caused significant and extensive damage to the school by causing the release, discharge and dispersal of asbestos throughout the school.

Northshore’s environmental consultant determined that Cobra’s performance of the work caused asbestos-containing hard fittings to be removed from the piping and dropped into wall cavities. As a result, asbestos contamination is stated to have been found in several rooms and the HVAC system. Extensive cleaning, remediation and repairs were required to eliminate the asbestos and remediate the damage.

Northshore sued Beresford alleging it breached its contract by causing or allowing asbestos disturbance and attendant property damage.

Beresford sought coverage from Charter Oak Fire Insurance Company and Travelers Property Casualty Company of America (collectively “Travelers”) under its insurance policies.

Travelers initially denied coverage based on an asbestos exclusion but agreed to provide a defense under a full reservation of rights. It moved for partial summary judgment as to claims related to asbestos contamination because of the exclusion.

The Travelers Policies asbestos exclusion is quoted in the Order as prohibiting coverage for bodily injury or property damage arising out of the actual or alleged presence or actual, alleged or threatened dispersal of asbestos, asbestos fibers or products containing asbestos,:

. . . provided that the “bodily injury” or “property damage” is caused or contributed to by the hazardous properties of asbestos.

Beresford argued that coverage was available because of the “efficient proximate cause rule.”

The Court describes this rule as requiring that a covered occurrence cause an excluded occurrence.

Beresford contended that Cobra’s bathroom work was initial damage to the school which set in motion a causal chain resulting in subsequent improper and negligent disturbance of ACM in the bathroom wall cavities. In other words, the underlying action is argued to have involved negligent construction or initial negligent installation of plumbing which is covered by the policy.

Travelers countered that Beresford:

. . . strains to contend that a loss that was clearly caused by the presence of asbestos was actually caused by some other covered peril that was the efficient proximate cause of all of the damages sought by the Northshore School District.

Travelers stated that there was not more than one event that caused the damage (i.e., no sequence of events or causal chain). Further, it argued that the asbestos exclusion would regardless preclude coverage because the initial asbestos-releasing event was the alleged negligent work in removing asbestos (i.e., not a covered peril).

The Court agrees with Travelers that the underlying action alleges a single event (i.e., Cobra’s improperly stripping hard fittings containing ACM and dropping them to the bottom of the all cavities). This is deemed to be the only event that caused the school to be contaminated with asbestos. No proceeding or subsequent event is stated to have occurred and therefore the proximate cause analysis is ruled to not apply.

The Court also holds that even when applying the efficient proximate cause analysis, there would not be coverage because the initial peril was Cobra’s asbestos disbursement.

A copy of the Order can be downloaded [here](#).