

# No Coverage for Breach of Contract Claim Under Commercial General Liability Insurance Policy

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One of the most difficult things to understand as a policyholder is that a commercial general liability insurance policy (“CGL”) does not provide coverage for everything that might happen to the insured business, including being sued. While the CGL policy has often been described as providing “litigation insurance” in addition to coverage for occurrences and accidents, there is a limit to the duty to defend. For example, if a business is sued for breach of contract, does the CGL policy have to provide a defense as part of the broader duty to defend? The Eighth Circuit court of appeals addressed that issue recently.

In [\*Murphy Oil Corp. v. Liberty Mutual Fire Insurance Co.\*](#), No. 19-1140, (8th Cir. Apr. 21, 2020), an oil refinery was sold and was extensively damaged by a fire a few months later. The buyer asked the seller for indemnification and the seller asked its insurance company to provide a defense. When the insurer refused, the seller brought a declaratory judgment action seeking coverage under its CGL policy for the breach of contract action brought by the buyer. The district court granted summary judgment to the insurer and the seller appealed.

In affirming summary judgment for the insurer on appeal, the court held that there was no duty to defend because there was no possibility of coverage under the policy. The insured argued that coverage was possible because the policy applied to property damage caused by an occurrence. The court noted that the buyer’s complaint included a single cause of action for breach of contract, with multiple allegations of how the seller breached the contract. The insured asserted that the cause of action was really one for property damage.

The court rejected the insured’s argument, stating that even if the breach of property claim involved property damage, it did not change the nature of the claim into one for covered property damage. Moreover, as the court noted, the statute of limitations for tort liability had expired and under relevant Arkansas law the running of the statute of limitations absolved the insured for property damage alleged by the buyer. Thus, any liability the insured had to the buyer was economic loss from breach of contract, which was not covered by the policy.

The court went on to point out the general contract liability exclusion in the policy, which precluded coverage, and that no exceptions applied. The court also rejected the insured’s argument that a modification to the alienated premises exclusion opened up the possibility of coverage. The court

held that the endorsement limiting the exclusion for alienated premises to a narrower category did not reinstate coverage for breach of contract where that exclusion remained intact.

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National Law Review, Volume X, Number 132

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