

COMMERCIAL GENERAL LIABILITY POLICY DEVELOPER'S EXPENSE IN REPAIRING DAMAGE FROM SOIL SETTLEMENT, EVEN ABSENT A LAWSUIT

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Desert Mountain Properties Limited Partnership v. Liberty Mutual Fire Insurance
Ct. Appeals, Div. One, August 3, 2010

Authored by the [JSH Appellate Team](#)

Desert Mountain, a developer, contracted for the construction of hillside homes in two subdivisions. The general contractor completed the homes. Four years later, Desert Mountain learned that settling caused cracks and other damage to 50 homes. Desert Mountain's expert concluded that there were substantial soil issues and other construction defects. Desert Mountain elected to correct these issues before any litigation occurred. Desert Mountain notified Liberty Mutual of the claim, began repairing the homes, then sued the general contractor. Desert Mountain sought reimbursement from Liberty Mutual for its costs for litigation and for repairs. Liberty denied the claim and Desert Mountain sued for bad faith.

The Liberty Mutual policies stated they would "pay those sums that the insured becomes legally obligated to pay as damages because of . . . 'property damage' to which this insurance applies." The policies did not define "legally obligated" or "damages," but the court of appeals held that this clause may be triggered even in the absence of a lawsuit or court order against the insured to pay damages. Furthermore, Desert Mountain's expenses for repairing property damage resulting from the faulty soil compaction were "damages" that Desert Mountain was "legally obligated to pay" under the policies. The policies' contractual liability exclusion did not apply to damages arising out of Desert Mountain's contractual liability to its customers. The court also declined to apply the policies' "broad form property damage" endorsement to exclude coverage. That exclusion applies only to the repair of defective workmanship and not to the repair of damage that resulted from the defective workmanship.