



The Bruins' complaint contains counts against Kiefer asserting breach of contract, breach of implied warranty of habitability, violations of the Illinois Consumer Fraud Act, and negligence. The complaint alleged that the Bruins entered into an oral contract with Kiefer on or about August 9, 2006, that pursuant to the oral contract, Kiefer agreed to build a retaining wall that would add support to the fill dirt, landscaping, pool deck, pool house, pool, home and septic tank, that construction was completed in January 2007, that the retaining wall began to crack and crumble in March 2008, and that the collapse of the retaining wall resulted in a sudden collapse of the backyard and an immediate reduction in support for the home, pool, deck, pool house, fill dirt, and septic tank. The complaint further alleged that the collapsed retaining wall resulted in damages that required clearing the collapsed wall, clearing of the eroded sections of the backyard and uprooted trees, and design and construction of a support system in a smaller backyard. The specific damages alleged included substantial damages to the pool and pool deck, loss of the wooded backyard, including mature trees, loss of additional trees and landscaping during the cleanup, temporary loss of support for the pool, pool deck, septic system, residential building, backyard, trees, and landscaping during completion of a new support system, temporary loss of use of the pool and entire backyard, and a loss of use of a substantial portion of the original backyard.

¶ 4 At the time of these events, Kiefer was insured under a commercial general liability (CGL) policy of insurance that it had purchased from Pekin. Kiefer tendered the defense of the Bruins' lawsuit to Pekin. Pekin accepted the tender under a reservation of rights and filed an action in the circuit court of Effingham County seeking a judgment declaring that it had no duty to defend Kiefer in the Bruins' action. Subsequently, Pekin filed a motion for summary judgment on the issue of its duty to defend. Pekin argued that it had no duty to defend Kiefer because the underlying complaint did not allege that the Bruins sustained property damage as a result of an "occurrence" as required under the CGL policy, and

alternatively that the property damage alleged by the Bruins was not covered as a result of specific exclusions in its policy. In response, Kiefer argued that the allegations in the underlying complaint were sufficient to trigger Pekin's duty to defend because the collapse of the retaining wall caused damage to property other than the retaining wall and constituted an accident under Illinois law.

¶ 5 After considering the pleadings, the insurance policy, and the arguments of counsel, the trial court denied Pekin's motion for summary judgment. The court found that Pekin had a duty to defend Kiefer because the underlying complaint alleged that the work performed by Kiefer caused damage to the retaining wall and to other property, and that part of the alleged damage fell within the scope of the coverage under the CGL policy. Pekin filed a motion for written findings pursuant to Supreme Court Rule 304(a) (eff. Feb. 26, 2010). Before that motion was ruled on, Pekin filed a notice of appeal. The circuit court then granted Pekin's motion and the circuit court entered an order containing the Rule 304(a) findings. Pekin then filed a second notice of appeal. After being apprised of the circumstances, this court dismissed the original appeal, finding that it was premature and that we lacked jurisdiction. *Pekin Insurance Co. v. Kiefer Landscaping, LLC*, No. 5-12-0479 (2013) (order).

¶ 6 At the outset, we note that Kiefer has questioned our jurisdiction to consider the appeal. We have considered Kiefer's arguments and reject them. The premature filing of the notice of appeal did not divest the circuit court of jurisdiction, and it had jurisdiction to enter the requisite Rule 304(a) findings. Appellate jurisdiction is properly vested in this court. See Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 304(a) (eff. Feb. 26, 2010).

¶ 7 We now consider whether the trial court erred in finding that Pekin has a duty to defend Kiefer in the underlying action. It is the general rule that the insurer's duty to defend is determined by the allegations in the underlying complaint. *Maryland Casualty Co.*

*v. Peppers*, 64 Ill. 2d 187, 193, 355 N.E.2d 24, 28 (1976). The insurer's duty to defend its insured is much broader than its duty to indemnify that insured. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 125, 607 N.E.2d 1204, 1220 (1992). The duty to defend arises if the complaint's allegations, when construed liberally in favor of the insured, fall within or potentially fall within the policy's coverage provisions. *Maryland Casualty*, 64 Ill. 2d at 193, 355 N.E.2d at 28; *Pekin Insurance Co. v. Miller*, 367 Ill. App. 3d 263, 265, 854 N.E.2d 693, 695-96 (2006). If recovery is premised on several theories of liability, the insurer is obligated to defend as long as one of the theories might possibly fall within the scope of coverage. *Maryland Casualty*, 64 Ill. 2d at 194, 355 N.E.2d at 28. The threshold requirements for the allegations in the underlying complaint are low, and the allegations in the underlying complaint are to be liberally construed in favor of the insured. *Lyons v. State Farm Fire & Casualty Co.*, 349 Ill. App. 3d 404, 407, 811 N.E.2d 718, 722 (2004).

¶ 8 Pekin contends that it has no duty to defend Kiefer in the Bruins lawsuit because the underlying complaint does not allege an "occurrence" resulting in property damage as required by its CGL policy.

¶ 9 The CGL policy at issue contains a section addressing bodily injury and property damage liability. In that section, Pekin agrees that it will pay "those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies," and that it will have "the right and duty to defend any 'suit' seeking those damages." That section further states that this insurance applies to "bodily injury" or "property damage" only if the "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the coverage territory. The CGL policy also contains a section defining terms used in the policy. "Occurrence" is defined as: "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

"Accident" is not defined in the policy. When construing CGL policies, our courts have defined an accident as "an unforeseen occurrence, usually of an untoward or disastrous character or an undesigned sudden or unexpected event of an inflictive or unfortunate character." (Internal quotation marks omitted.) *Monticello Insurance Co. v. Wil-Freds Construction, Inc.*, 277 Ill. App. 3d 697, 703, 661 N.E.2d 451, 455 (1996).

¶ 10 CGL policies are intended to provide coverage for injury or damage to the person or property of others, and are not intended to pay the costs associated with repairing or replacing the insured's defective work and products. *Pekin Insurance Co. v. Richard Marker Associates, Inc.*, 289 Ill. App. 3d 819, 822, 682 N.E.2d 362, 365 (1997). When the underlying complaint alleges that the insured's defective workmanship necessitates repair to or replacement of the work itself, the complaint fails to allege an occurrence triggering coverage under the CGL policy. *Viking Construction Management, Inc. v. Liberty Mutual Insurance Co.*, 358 Ill. App. 3d 34, 46, 831 N.E.2d 1, 10 (2005); *Wil-Freds Construction, Inc.*, 277 Ill. App. 3d at 703, 661 N.E.2d at 455. When, however, the insured's alleged negligence or defective workmanship results in damage to something other than the work it performed, there is an occurrence within the meaning of the policy. *Miller*, 367 Ill. App. 3d 263, 854 N.E.2d 693; *Lyons*, 349 Ill. App. 3d at 408, 811 N.E.2d at 723; *Richard Marker Associates*, 289 Ill. App. 3d at 822-23, 682 N.E.2d at 365-66.

¶ 11 The underlying complaint alleged that faulty workmanship by Kiefer caused damage to the retaining wall constructed by Kiefer and damage to other structures, objects, and land that were not furnished by Kiefer or part of the work itself. The alleged destruction of or damage to tangible property other than that furnished or worked on by Kiefer constitutes damage that is potentially covered under the CGL policy. Mindful that the duty to defend is broader than the duty to indemnify and that the threshold requirements for the underlying complaint's allegations are low, we conclude that the Bruins' complaint adequately alleges

that Kiefer's faulty workmanship caused an accident. As such, there is an alleged occurrence, potentially within the scope of the CGL policy's coverage, that triggers Pekin's duty to defend.

¶ 12 The trial court correctly found that the allegations in the underlying complaint potentially fall within the policy's coverage and that Pekin has a duty to defend Kiefer in the underlying action filed by the Bruins. Pekin's motion for summary judgment was properly denied.

¶ 13 Accordingly, the judgment of the circuit court of Effingham County is affirmed.

¶ 14 Affirmed.