



a four-inch pipe under a concrete slab where the contract called for a six-inch pipe; (2) improperly installing a dishwasher supply line; and (3) installing a pipe in such a way that the fittings separated under ordinary hydrostatic pressure. Each of these instances of negligent work allegedly resulted in damage to surrounding property built by Hathaway. Applying the commonly accepted meaning of “accident” to the damage at hand, the court concluded that the instances of negligent work, which resulted in unforeseen or unexpected damage, constituted an “occurrence.” In so holding, the court expressly rejected the countervailing

assertion that Whisnant’s acts could not amount to an “occurrence” since they were “performed intentionally.” Rather, as the court explained, a deliberate act performed negligently is an “accident” if the effect of that act is not the expected or intended result.

#### **Implications**

---

The Hathaway decision is of particular significance to property owners, contractors and policyholders alike under contracts for general liability insurance because the decision illustrates that an otherwise intentional act may nevertheless constitute an

“occurrence” where the resulting harm or damage is different from the result that was originally intended by the insured. Consequently, the decision places emphasis on the subjective objective of the insured at the time the act was performed, recognizing that where something goes awry, yielding an unintended or unexpected outcome, any consequential bodily injury or property damage may be the result of a covered “occurrence.” The opinion also reinforces the broad definition of the term “accident” the Georgia courts have applied in the absence of a specific policy definition.

© 2011 Hunton & Williams LLP. Attorney advertising materials. These materials have been prepared for informational purposes only and are not legal advice. This information is not intended to create an attorney-client or similar relationship. Please do not send us confidential information. Past successes cannot be an assurance of future success. Whether you need legal services and which lawyer you select are important decisions that should not be based solely upon these materials.