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## Summary Judgment Affirmed by Oregon Court of Appeals on Employee Dishonesty Policy

By Ronald J. Clark, R. Daniel Lindahl, Jacqueline Mitchson

On June 19, 2019, the Oregon Court of Appeals issued its opinion in *Summit Real Estate Management v. Mid-Century Ins. Co.* Ron Clark, Dan Lindahl, and Jackie Mitchson of Bullivant Houser Bailey represented Mid-Century at the trial court and on appeal.

The case involved the insured's claim for coverage for employee embezzlement. The insured had been covered for employee dishonesty during many consecutive policy periods. The embezzlement lasted for many years, and the insured argued that each policy covered whatever embezzlement occurred while the policy was in force, regardless of when the embezzlement was discovered. The insurer contended that the "prior insurance" provision limited the number of policy periods implicated by the long-term embezzlement.

The coverage analysis turned on interpretation of the "prior insurance" provision, with the Court of Appeals affirming the trial court ruling in favor of the insurer. Both the trial court and the appellate court agreed that the "prior insurance" provision limited the number of policy periods that could be triggered by the embezzlement. The case also included discussion of several other issues of broader interest:

- The court discussed ORS 742.246(2), which is the statute requiring "Any provision restricting or abridging the rights of the insured under the policy [to be] preceded by a sufficiently explanatory title printed or written in type not smaller than eight point capital letters." The court held that this statute is limited to "standard fire insurance policies" and did not apply to Mid-Century's policy.
- The court's coverage analysis relied on the principle that coverage must be evaluated by looking at all provisions in context, and the court rejects the insured's attempt to focus on just a few words. This analysis is useful to responding to arguments by insureds who try to drum up an ambiguity by looking at just a part of the policy.
- The court rejected, as a matter of law, the insured's argument that the insurance agent's representations about coverage estopped the insurer from denying coverage. The court said an agent's general statements about coverage do not amount to specific, binding representations.
- The court rejected the insured's argument that its claim-preparation expenses (such as having an audit of its financial records) were "direct loss" caused by the embezzlement. The court ruled those expenses were consequential losses, and not covered because the policy covered only "direct loss" from employee dishonesty.