

Sixth Circuit Revives Builder's Risk Coverage, Refusing to Let Insurer Escape on a Technicality

[Blog](#) [Hunton Insurance Recovery Blog](#)

Hunton Andrews Kurth LLP

USA | July 17 2026

In *3371 Reading, LLC v. Liberty Mutual Group*, the Sixth Circuit did something courts do not always do in coverage disputes: it refused to let an insurer avoid liability based on a technical policy condition that could never actually be satisfied.

The decision is a straightforward reminder of two core principles. First, policies must be interpreted from the standpoint of a reasonably prudent insured. Second, hyper-technical conditions cannot be used to deny coverage where compliance is never possible.

The Condition That Couldn't Be Met

3371 Reading was comprised of two real estate investors who sought to redevelop a previously abandoned building. During renovations, the building burned down due to unknown causes. 3371 Reading submitted a claim on its builder's risk policy. The insurer denied coverage, citing a policy endorsement that required the property to be fenced. Specifically, the policy required a "fenced jobsite," defined as a fence at least six feet high that "completely surrounds" the property. That requirement might make sense in the abstract, but here it was untethered from reality. The insured property shared a wall with a neighboring building, making it impossible to install a fence that "completely surrounds" the site.

3371 Reading sued the insurer, alleging breach of contract and bad faith claim refusal. After the parties filed cross-motions for summary judgment, the district court, applying Ohio law, ruled in favor of the insurer, reasoning that insurance contracts should be interpreted in a manner that "gives the contract vitality," and 3371 Reading could have complied with the provision by constructing a three-sided fence.

The Sixth Circuit: You Can't Deny Coverage Based on the Impossible

The Sixth Circuit reversed, and it did so in a way that cuts directly against the kind of technicality defenses insurers often raise. The court emphasized that insurance policies are interpreted from the standpoint of a reasonable layperson, and a provision is unenforceable if it renders coverage illusory. Applying those principles, the court concluded that it was impossible to construct a fence that "completely surrounds the jobsite" as the endorsement required because a reasonable layperson would not expect such a requirement to be enforced when it was impossible to comply with.

The court also rejected the insurer's argument that 3371 Reading could have constructed a three-sided fence. Despite this alternative, it would still be impossible to follow the provision as stated, which required a fence completely surrounding the property on all sides, not just three sides. Because it would be impossible to comply with the provision, that requirement is void, and "3371 Reading was entitled to coverage for the fire."

What makes this decision notable is how explicitly the court rejected the insurer's attempt to reframe the condition after the fact. The court did not accept the insurer's invitation to rewrite the policy to allow a three-sided fence. The policy language explicitly required a fence that "completely surrounds" the jobsite. Any other interpretation would render the provision ambiguous, and ambiguous provisions must be construed in favor of the policyholder.

The Sixth Circuit: You Can't Deny Coverage Absent Prejudice

The Sixth Circuit also made clear that, even setting impossibility aside, the insurer faced a separate and equally significant problem: it could not demonstrate prejudice resulting from the insured's failure to comply with the fencing endorsement.

The court reasoned that a prejudice requirement was appropriate in this context, much like the prejudice requirement that courts routinely impose when insurers seek to deny coverage based on alleged breaches of notice or cooperation provisions. Although those policy provisions often do not expressly require a showing of prejudice, courts nevertheless require insurers to establish that the alleged breach meaningfully impaired their interests before coverage may be forfeited. The Sixth Circuit saw no reason to treat the fencing endorsement differently.

Applying that principle, the court refused to enforce the endorsement as an automatic bar to coverage absent evidence connecting the lack of fencing to the loss. There was no evidence that the absence of a fence caused the fire, contributed to its spread, increased the severity of the damage, or otherwise affected the insurer's position. Under those circumstances, allowing the insurer to deny coverage would have resulted in a windfall based on a purely technical policy violation that had no relationship to the loss at issue.

The court was unwilling to permit such a forfeiture. Its decision reflects a broader principle of insurance law: coverage should not be denied based on a policy breach that is unrelated to the claimed loss. Put differently, where an insurer cannot demonstrate that the alleged violation caused actual prejudice, courts are often reluctant to allow the insurer to escape an otherwise valid coverage obligation.

The Bigger Picture

3371 Reading pushes back on a familiar strategy insurers use to restrict coverage. Builder's risk and other property policies often contain detailed protective safeguards, such as fencing requirements, alarms, and security measures. After a loss, insurers frequently rely on alleged noncompliance with those provisions to deny coverage, even where the connection to the loss is weak or nonexistent. *3371 Reading* demonstrates the limits of that approach.

The decision underscores that policy conditions must be interpreted from the standpoint of a reasonably prudent insured and in light of the practical realities of the insured property. In the builder's risk context, courts are reluctant to enforce protective safeguards as automatic forfeiture provisions where compliance is impossible or where the alleged breach had no meaningful connection to the loss. Absent a showing of prejudice, a technical violation alone may not be enough to defeat coverage.

The insurer was dissatisfied with the Sixth Circuit's decision and have petitioned for rehearing en banc. We will continue to monitor the case and provide updates as it develops.