

PUBLICATION

Eleventh Circuit Case Delivers Big Win for Contractors Seeking Insurance Coverage

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The U.S. Court of Appeals for the Eleventh Circuit has issued an important opinion that is good for contractors making claims on general liability policies, and not so good for the insurers issuing those policies. Specifically, the Eleventh Circuit reversed the District Court's decision in favor of the insurer, and directed that judgment be entered in favor of the contractor establishing that the insurer was obligated to satisfy a \$350,000 judgment entered against the contractor and in favor of the property owner in a separate lawsuit.

As background, the contractor (Kiker) entered into contracts with the owner (the Parish) to install a new shingle roof and make other roof additions. After it began work, Kiker discovered that the existing roof decking was made of gypsum panels rather than plywood. Instead of replacing the gypsum panels with plywood, Kiker elected to install the shingles directly into the gypsum panels. Kiker also failed to install felt underlayment, and improperly covered up flashing where the roof joined the brick wall.

Kiker's work led to substantial leaking, and caused substantial damage to the gypsum panel decking and the property's interior. To prevent further leaking and to repair this damage, the Parish removed the shingles so as to replace the decking, and had to perform interior repairs. The Parish sued Kiker in state court for breach of implied warranty, and the insurer (Penn National) defended under a reservation of rights.

A jury entered a verdict against Kiker for \$350,000, but Penn National refused to indemnify Kiker for this judgment. Instead it filed this declaratory judgment action seeking a judgment that it had no further obligations. The District Court ruled in Penn National's favor, but the Eleventh Circuit reversed. In reversing, the Eleventh Circuit discussed a number of important issues relating to insurance coverage in the construction context.

First, the Court noted that the underlying insurance policy obligated Penn National to indemnify Kiker for property damage "caused by an occurrence, meaning an accident." The Court explained, that while a property owner's claim for replacing a contractor's own faulty work would not be covered, a claim for damage to other property resulting from such faulty work may arise out of an accident and be covered as an occurrence.

Accordingly, while a claim against Kiker for it to fix its improperly installed shingles would not be covered, the Parish's claims here were covered. This is because the Parish sought damages for (1) having to repair the interior ceilings that were damaged by leaking caused by Kiker; and (2) repairing the gypsum deck underneath the main roof. Because Kiker had not worked on the damaged portions of the property, these were covered damages. Additionally, because the Parish had to remove the shingles in order to repair the damaged portions, the removal and reinstallation of the shingles were covered under the insurance policy.

Finally, the Court rejected Penn National's argument that even if the injuries were covered occurrences, Penn National should not have liability to indemnify because of the insurance policy's "contractual liability exclusion." The Court found that such an exclusion does not exclude coverage for all breach of contract claims, but instead only applies to exclude claims arising out of contractual indemnity agreements. Accordingly, the exclusion did not apply to the Parish's breach of contract claim based on a breach of implied warranty, and Penn National was obligated to indemnify Kiker for the full amount of the judgment.

This case is an important win for contractors seeking coverage under general liability insurance policies. The case is *Penn. Nat. Mutual Casualty Ins. v. St. Catherine of Sienna Parish and Kiker Corp.*, 14-12151 (11th Cir. June 10, 2015).