

THOUGHT LEADERSHIP

News

FIFTH CIRCUIT REVERSES SOUTHERN DISTRICT RULING HOLDING JURY VERDICT NOT CONCLUSIVE AS TO LIABILITY COVERAGE QUESTION

Newsbrief

17 OCT 2011

The Fifth Circuit Court of Appeals last Tuesday reversed a pro-carrier ruling from the Southern District of Texas holding the trial court had incorrectly concluded, based on a state court jury's findings, that the insured's conduct did not require the insurer to indemnify. In *Mid-Continent Casualty Co. v. Brock*, No.10-20726, 2011 WL 4807715 (5th Cir. Oct. 11, 2011), the insurer sought the district court's declaration of no coverage based on the verdict in a Texas suit between Ms. Brock and the insured. That suit involved a number of claims arising out of the insured's restoration work at Ms. Brock's home following a fire. The insurer argued that the state court jury's answers to a number of questions established that the insured's conduct was not an "occurrence" covered by the policy.

The Fifth Circuit first observed that the jury's answers, though they established the insured's liability, did not establish that Ms. Brock's damages were a foreseeable result of the insured's actions. In addition, although the jury found that the insured intentionally engaged in the conduct giving rise to liability, the jury did not find that the insured intended Ms. Brock's damages that resulted from the conduct. Thus, the jury verdict was not conclusive as to whether Ms. Brock's damages "were expected or intended," and the Fifth Circuit remanded the case to the District Court for further proceedings.