

THOUGHT LEADERSHIP

News

FEDERAL APPEALS COURT RULES INSURER HAS DUTY TO DEFEND ITS INSURED CONTRACTOR UNDER “EIGHT CORNERS” RULE

Newsbrief

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The Fifth Circuit Court of Appeals recently ruled an insurer had a duty to defend its insured in a negligence action arising from the insured’s faulty construction work on a residential home. *Gonzalez v. Mid-Continent Casualty Company*, No. 19-10565, (5th Cir. Aug. 13, 2020) involved a suit by a homeowner against a contractor performing siding work on the home. The homeowner sued the contractor in Texas state court, alleging the contractor negligently hammered nails through the house’s electrical wiring when he installed wiring in 2013, which caused a fire to erupt in 2016.

When the contractor sought defense and indemnity from his insurer, the insurer refused to provide either because the insured canceled his policy in June 2014. In turn, the contractor sued the insurer in state court for breach of contract, breach of the duty to defend, breach of the duty to indemnify, and a declaratory judgment seeking the parties rights and obligations under the policy. The insurer removed the case to federal court and moved for summary judgment. The federal court denied the insurer’s motion and instead entered a partial summary judgment holding that the insurer owed the contractor a duty to defend. The insurer appealed.

On appeal, the Court applied the “eight-corners” rule applicable under Texas law, which provides that the liability insurer is to determine its duty to defend solely from the terms of the policy and the pleadings of the third-party claimant. In so doing, the Court emphasized the language to the policy applied to “(1) an accident (2) that causes physical injury to tangible property (3) during the policy period.” Moreover, the third-party claimant’s petition alleged the contractor “improperly hammered nails through electrical wiring” in 2013, which caused the 2016 fire. The petition also alleged that the fire “related back” to the construction of the siding in 2013. Based on the language in the policy and the petition, the Court held the insurer owed a duty to defend the contractor, ruling that so long as any of the alleged damage occurred during the policy period, the duty to defend attaches.

The insurer also argued that two exclusions in the policy applied because they precluded coverage for property damage to “that particular part” of real property on which the contractor directly or indirectly was performing operations, or that had to be restored, repaired, or replaced because his work was incorrectly performed on it. However, the Court disagreed, stating the “particular part” of the property the contractor was hired to work on was the siding, not the electrical wiring, and holding the exclusions therefore did not apply. The Court did not rule on

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whether the insurer had a duty to indemnify the insured because the issue was not before the Court on appeal.