

THOUGHT LEADERSHIP

News

DEFENSE OBLIGATION FOUND IN CONSTRUCTION DEFECT CASE BY FEDERAL JUDGE IN AUSTIN

Newsbrief

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A federal District Court judge in Austin recently ordered a liability insurer to defend its insured in a residential construction defect case, continuing the recent Texas trend on broadly construed duty-to-defend issues. In *Mid-Continent Cas. Co. v. JTH Customs, Inc.*, No. 1:21-CV-00520-LY, 2022 WL 2441855 (W.D. Tex. July 4, 2022) (slip op.), JTH designed and built a custom home for the plaintiffs. JTH used subcontractors to perform the work. After the plaintiffs moved in, they alleged they experienced numerous problems with the home, including mold, electrical issues, drainage and masonry issues, and defects in the windows, doors, swimming pool and fountain.

JTH's liability insurer filed a declaratory judgment action seeking a declaration that it owed no duty to defend JTH because the entire home was JTH's work, and the claim was excluded under "Your Work" and similar exclusions. The court disagreed, holding that the plaintiffs alleged the defective parts of the home, such as windows, caused property damage to other non-defective parts of the home, such as floors, and that the alleged damage to the non-defective work was sufficient to trigger a duty to defend, even though the entire home was JTH's work.

Editor's Note: This ruling continues a Texas trend observed over the last two years in which it has become considerably more difficult for liability insurers to prevail on duty-to-defend questions in Texas. Courts across the state and at every level have become markedly more friendly to policyholders on a wide array of coverage issues affecting the duty to defend. However, in this case, the court was also following an older Fifth Circuit case from 2009, holding that damage to a general contractor's non-defective work caused by its defective work can trigger a duty to defend, even though it is all the general contractor's work.