

Fla. Law Favors Insured In Defense Row, 11th Circ. Told

Law360

Insurance consumer group United Policyholders has urged the Eleventh Circuit to find that Auto-Owners Insurance Co. must defend Elite Homes Inc. in a construction defect suit, saying Florida law holds that insurers must provide a defense if there is any possibility of coverage.

The consumer group said in an amicus brief filed last month but accepted by the court Friday that allegations against Elite Homes included damage to the interior of the home that could fall within the contractor's policy with Auto-Owners Insurance.

"Florida's broad duty to defend is vital to protecting the state's home builders, and Florida courts have consistently held that the underlying allegations must be read broadly, with all doubts and ambiguities resolved in the insured's favor to ensure the full measure of protection afforded by the policy," the organization said.

Auto-Owners, meanwhile, argues that U.S. District Judge Timothy J. Corrigan was right to rule that it has no duty to defend Elite in a suit brought by homeowners Joseph and Emily Crozier because all of the Croziers' claimed damages fall within an exclusion in Elite's commercial liability policy for damage to the builder's own work.

"The district court's entry of summary judgment that Auto-Owners has no duty to defend because the Croziers' complaint does not allege any damages beyond Elite Homes' 'work' should be affirmed," Auto-Owners' attorneys wrote.

Elite served as the general contractor on the Croziers' family home in Jacksonville, Florida. Post-construction, the Croziers claimed that water had begun to seep into the home around the windows and filed suit against the builder in Florida state court when the parties failed to agree on the scope of

repairs. In their complaint, the Croziers alleged water intrusion had caused extensive damage to “other property” inside the home, including sheathing, insulation and drywall.

Auto-Owners agreed to defend Elite in the defect litigation pursuant to a reservation of rights to later deny coverage. The insurer then filed the instant suit in September 2014, seeking a ruling that it had no obligation to defend or indemnify Elite on account of a number of policy exclusions, including the “your work” exclusion.

In February, Judge Corrigan entered judgment in favor of Auto-Owners after finding the allegations in the Croziers’ complaint related only to the “structure of the home” and not anything beyond Elite’s work as defined in the “your work” exclusion.

Elite appealed to the Eleventh Circuit, asserting that the Croziers’ claims regarding “other property” encompass damages to interior finishes and other portions of the home that aren’t solely tied to its own work. Nonprofit policyholder advocacy group United Policyholders filed an amicus brief in support of Elite, contending that the lower court’s ruling is contrary to Florida law regarding an insurer’s duty to defend because the Croziers’ complaint contained allegations that could arguably fall within the coverage of the Auto-Owners policy.

Auto-Owners countered that the underlying action clearly alleges only damages related to Elite’s work, and scoffed at the notion that the complaint’s references to “other property” could trigger its duty to defend.

“Damages cannot be imagined into a complaint just because the supposed magic words ‘other property’ are used,” the insurer’s attorneys wrote.

Representatives for the parties could not immediately be reached for comment Friday.

United Policyholders is represented by Stephen A. Marino Jr. and Benjamin C. Hassebrock of Ver Ploeg & Lumpkin PA.

Auto-Owners is represented by J. Stephen O’ Hara Jr. and James D. Morgan of the O’Hara Law Firm PA.

Elite Homes is represented by Mark Andrew Boyle, Alexander Brockmeyer and Molly Ann Chafe

Brockmeyer of Boyle & Leonard PA.

The case is Auto-Owners Insurance Co. v. Elite Homes Inc., case number 16-10996, in the U.S. Court of Appeals for the Eleventh Circuit.

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