CASE NO. 16-10996-AA

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

AUTO-OWNERS INSURANCE COMPANY,

***Appellee*,**

vs.

ELITE HOMES, INC.,

Appellant.

On Appeal from the United States District Court, Middle District of Florida
Case No. 3:14-cv-01182-TJC-MCR

AMICUS CURIAE BRIEF OF UNITED POLICYHOLDERS IN SUPPORT OF APPELLANT, ELITE HOMES, INC.

June 3, 2016

STEPHEN A. MARINO, JR., ESQ.
BENJAMIN C. HASSEBROCK, ESQ.
VER PLOEG & LUMPKIN, P.A.
100 S.E. Second Street, 30th Floor
Miami, Florida 33131-2151
(305) 577-3996
(305) 577-3558 *facsimile*

CERTIFICATE OF INTERESTED PARTIES

The following list is provided pursuant to Federal Rule of Appellate Procedure 26 and Eleventh Circuit Rule 26.1:

Auto-Owners Insurance Company

Baggett Law

Baggett, Amanda P., Esquire

Baggett, Matthew B. Esquire

Boyle & Leonard, P.A.

Boyle, Mark A., Esquire.

Brockmeyer, Alexander L., Esquire.

Chafe Brockmeyer, Molly A., Esquire

Corrigan, Honorable Timothy J., United States District Judge

Crozier, Emily

Crozier, Joseph

Elite Homes, Inc.

Hassebrock, Benjamin H., Esquire

Lambertson, Christopher

Home-Owners Insurance Company

Marino, Jr., Stephen A., Esquire

Morgan, James D., Esquire

O'Hara, J. Stephen, Esquire

O'Hara Law Firm

Owners Insurance Company

Property-Owners Insurance Company

Richardson, Honorable Monte Co., United States Magistrate Judge

Robertson, Peter A., Esquire

The Robertson Firm

Stanford, Jr., William Douglas, Esquire

Southern-Owners Insurance Company

United Policyholders

Ver Ploeg & Lumpkin, P.A.

Appellant, Elite Homes, Inc., is a privately held Florida corporation which is not listed or traded on any stock exchange or bulletin board. Elite Homes does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

Amicus Curiae, United Policyholders, is a nonprofit, tax-exempt, 501(c)(3) corporation organized under the laws of the State of California and funded by donations and grants.

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PARTIES C-1

TABLE OF CONTENTS i

TABLE OF CITATIONS ii

IDENTITY AND INTEREST OF AMICUS CURIAE...1

STATEMENT OF THE ISSUES...3

SUMMARY OF THE ARGUMENT 4

ARGUMENT 5

I. AUTO-OWNERS HAD A DUTY TO DEFEND ELITE HOMES BECAUSE THE UNDERLYING COMPLAINT ALLEGED ELITE HOMES' DEFECTIVE CONSTRUCTION CAUSED DAMAGE TO OTHER PROPERTY, INCLUDING THE "INTERIOR FINISHES" AND "INTERIOR PORTIONS OF THE HOME." 5

A. Under Florida law, the duty to defend is triggered when the underlying allegations create any possibility of coverage. 5

B. The broad standard governing the duty to defend provides vital protection for Florida's home builders...8

C. Auto-Owners had a duty to defend Elite Homes because the alleged damage to "interior finishes" and "interior portions of the home" are fairly and potentially within coverage. 10

CONCLUSION 16

CERTIFICATE OF COMPLIANCE..17

CERTIFICATE OF SERVICE 18

TABLE OF CITATIONS

Federal Cases

Carithers v. Mid-Continent Cas. Co.,
782 F.3d 1240 (11th Cir. 2015) 6, 7, 11

J.B.D. Constr., Inc. v. Mid-Continent Cas. Co.,
571 F. App'x 918 (11th Cir. 2014) 10, 12, 13, 14, 15, 16

Mid-Continent Cas. Co. v. Am. Pride Bldg. Co.,
601 F.3d 1143 (11th Cir. 2010) 7

Miranda Constr. Dev., Inc. v. Mid-Continent Cas. Co.,
763 F. Supp. 2d 1336 (S.D. Fla. 2010) 15, 16

Pub. Risk Mgmt. of Fla. v. One Beacon Ins. Co.,
569 F. App'x 865 (11th Cir. 2014) 10

Trizec Props., Inc. v. Biltmore Constr. Co.,
767 F.2d 810 (11th Cir. 1985) 6, 7, 11

Voeller Constr., Inc. v. S.-Owners Ins. Co.,
No. 8:13-CV-3169-T-30MAP,
2015 WL 1169420 (M.D. Fla. Mar. 13, 2015) 11, 12, 13, 14, 15, 16

State Cases

Alderman v. Murphy,
486 So. 2d 1334 (Fla. 4th DCA 1986) 8

Baron Oil Co. v. Nationwide Mut. Fire Ins. Co.,
470 So. 2d 810 (Fla. 1st DCA 1985) 6

Biltmore Constr. Co. v. Owners Ins. Co.,
842 So. 2d 947 (Fla. 2d DCA 2003) 12, 14, 15, 16

Buckner v. Lower Fla. Keys Hosp. Dist.,
403 So. 2d 1025 (Fla. 3d DCA 1981) 8

First Am. Title Ins. Co. v. Nat'l Union Fire Ins. Co.,
695 So. 2d 475 (Fla. 3d DCA 1997) 7

Fun Spree Vacations, Inc. v. Orion Ins. Co.,
659 So. 2d 419 (Fla. 3d DCA 1995) 8

Jones v. Fla. Ins. Guar. Ass'n,
908 So. 2d 435 (Fla. 2005).. 5, 6, 11

Klaesen Bros., Inc. v. Harbor Ins. Co.,
410 So. 2d 611 (Fla. 4th DCA 1982) 7

Marr Invs., Inc. v. Greco,
621 So. 2d (Fla. 4th DCA 1993) 8

Federal Rules

11th Cir. R. 26.1 ....C-1

Fed. R. App. P. 26 ....C-1

Fed. R. App. P. 29(c)(5)...2

Fed. R. App. P. 32(a)(7)(B) 17

Other Authorities

S. Turner, *Ins. Coverage of Constr. Disputes* § 7:5 (2d ed.) 7, 9

IDENTITY AND INTEREST OF AMICUS CURIAE

United Policyholders ("UP"), a non-profit 501(c)(3) organization founded in 1991, is an information resource and a voice for insurance consumers in Florida and throughout the United States. UP assists disaster victims, individual insureds, and commercial policyholders with every type of insurance product. Grants, donations and volunteers support our work. UP does not accept funding from insurance companies.

UP's work is divided into three areas: *Roadmap to Recovery*™ (disaster recovery and claim assistance), *Roadmap to Preparedness* (disaster preparedness through insurance education), and *Advocacy and Action* (advancing pro-consumer laws and public policy). UP hosts a library of publications and videos related to personal and commercial insurance products, coverage, and the claims process on its website, http://www.uphelp.org.

UP has been active in Florida since Hurricane Andrew in 1992. UP has worked statewide with the Florida Insurance Commissioner, the Office of Insurance Regulation, other non-profits, businesses, and home owners. UP is involved in projects related to property insurance availability, promoting disaster preparedness, damage mitigation, consumer education, and assistance in navigating claims. State insurance regulators, academics and journalists throughout the United States routinely seek UP's input on insurance matters. For six consecutive years,

UP has been appointed as an official consumer representative to the National Association of Insurance Commissioners.

UP routinely appears as amicus curiae in appeals throughout the United States. UP has submitted numerous briefs concerning Florida insurance law issues in this Court and the Florida Supreme Court, including: *Lemy v. Direct General Finance Co.*, Case No. 12-14794 (11th Cir. 2014); *Amelia Island Company v. Amerisure Ins. Co.*, Case No. 10-10960G (11th Cir. 2010); *Sebo v. American Home Assurance Co.*, Case No. SC14-897 (Fla. 2014); *Washington National Ins. Corp. v. Ruderman*, Case No. SC12-323 (Fla. 2012); and *Amado Trinidad v. Florida Peninsula Ins. Co.*, Case No. SC11-1643 (Fla. 2012).

In the instant case, UP seeks to appear as *amicus curiae* to address Florida law governing a liability insurer's duty to defend, an issue that impacts all Florida policyholders and extends well beyond the outcome of this litigation. UP believes reversal of the district court's order is necessary to maintain the broad standard requiring an insurer to defend its insured whenever the underlying complaint alleges any possibility of coverage. UP respectfully requests that this Honorable Court reverse the district court's judgment and remand for further proceedings.

Pursuant to Federal Rule of Appellate Procedure 29(c)(5), UP states that the undersigned has authored this brief in whole. No party has contributed money to fund this brief and the undersigned has prepared this brief *pro bono*.

STATEMENT OF THE ISSUES

Whether the district court erred in determining Auto-Owners had no duty to defend Elite Homes, where the underlying complaint alleged Elite Homes' defective construction caused damage to other property, including the "interior finishes" and "interior portions of the home"?

SUMMARY OF THE ARGUMENT

The district court's decision should be reversed because it departs from well-settled Florida law requiring a liability insurer to defend its insured whenever the underlying allegations show any possibility of coverage. 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. Allegations against Elite Homes identified damage to "interior portions of the home" and "interior finishes" that could fall within coverage, requiring Auto-Owners to defend these claims. This Court should reverse the district court's decision, find Auto-Owners' had a duty to defend Elite Homes in the underlying action, and remand for further proceedings.

ARGUMENT

I. AUTO-OWNERS HAD A DUTY TO DEFEND ELITE HOMES BECAUSE THE UNDERLYING COMPLAINT ALLEGED ELITE HOMES' DEFECTIVE CONSTRUCTION CAUSED DAMAGE TO OTHER PROPERTY, INCLUDING THE "INTERIOR FINISHES" AND "INTERIOR PORTIONS OF THE HOME."

Florida businesses purchase commercial general liability insurance as protection against third party claims. These standard form policies, like the one Auto-Owners issued to Elite Homes, contain an express promise to defend the insured from lawsuits.[1] This promise is often the most significant benefit purchased with the policy.

A. Under Florida law, the duty to defend is triggered when the underlying allegations create any possibility of coverage.

The insurer's duty to defend is solely based on the allegations in the operative pleading against the insured. *Jones v. Fla. Ins. Guar. Ass'n*, 908 So. 2d 435, 443 (Fla. 2005). The insurer must defend if "the complaint alleges facts that fairly and potentially bring the suit within policy coverage." *Id*. at 442-43 (citations omitted).

This duty to defend is independent from and broader than the insurer's duty to indemnify its insured or pay damages under the policy. The insurer must defend

[1] Auto-Owners' policy uses standard form language establishing the "right and duty to defend the insured against any 'suit' seeking [covered] damages." D.E. 1-2 at 3.

"even if the later true facts show there is no coverage," *Trizec Properties, Inc. v. Biltmore Construction Co.,* 767 F.2d 810, 812 (11th Cir. 1985), or where "the allegations in the complaint are factually incorrect or meritless." *Jones*, 908 So. 2d at 443 (citation omitted). The insured is equally entitled to this protection when the underlying allegations are ambiguous or coverage is doubtful: "Any doubts regarding the duty to defend must be resolved in favor of the insured." *Id.* (citation omitted); *see also Baron Oil Co. v. Nationwide Mut. Fire Ins. Co.*, 470 So. 2d 810, 816 (Fla. 1st DCA 1985) (recognizing "general rule that the allegations of the complaint are controlling and, if ambiguous, must be construed most favorably to the insured to establish the duty to defend") (citations omitted).

For over thirty years, this Court has consistently and correctly held that the pleading threshold to trigger an insurer's defense obligation is exceedingly low and does not require a specific allegation of covered property damage. *Carithers v. Mid-Continent Cas. Co.*, 782 F.3d 1240, 1246 (11th Cir. 2015); *Trizec Properties*, 767 F.2d at 813. Last year, in *Carithers*, this Court required an insurer to defend a Florida home builder in a suit involving its subcontractor's allegedly defective work, even though the insurer could not have known whether the policy provided coverage because the law was unclear:

> Given the uncertainty in the law at the time, [the insurer] did not know whether there would be coverage for the damages sought in the underlying action because Florida courts had not decided which trigger applies. [The insurer] was required to resolve this uncertainty

> in favor of the insured and offer a defense to [its insured]. *See Mid–Continent Cas. Co. v. Am. Pride Bldg. Co.*, 601 F.3d 1143, 1149 (11th Cir. 2010) ("'Thus, an insurer is obligated to defend a claim even if it is uncertain whether coverage exists under the policy.'") (quoting *First Am. Title Ins. Co. v. Nat'l Union Fire Ins. Co.*, 695 So. 2d 475, 476 (Fla. 3d DCA 1997)).

Carithers, 782 F.3d 1240, 1246 (11th Cir. 2015). This decision affirmed that an insurer is required to defend absent absolute certainty that the alleged damages are not covered. *Id.* at 1246 (insurer "required to offer a defense in the underlying action unless it was certain that there was no coverage for the damages sought").

In *Trizec Properties*, this Court held that an insurer must defend a subcontractor from defective installation claims despite allegations that the covered property damage was not discovered until three years after the relevant policy period. *Trizec Properties*, 767 F.2d at 813. The *Trizec Properties* court found that the allegations "at least marginally and by reasonable implication . . . could be construed to allege that the damage may have begun to occur" during the policy period, and were "therefore broad enough to allow [the claimant] to prove that at least some of the damage" was covered. *Id.* (quoting *Klaesen Bros., Inc. v. Harbor Ins. Co.*, 410 So. 2d 611, 613 (Fla. 4th DCA 1982)). This decision has been cited by a leading insurance law treatise for the proposition that "[i]nsurers are obligated to defend their insureds if pleadings are unclear or ambiguous as to whether the claim is covered by the policy." S. Turner, *Ins. Coverage of Constr. Disputes* § 7:5 (2d ed.) (citing *Trizec Props.*, 767 F.2d at 813).

B. The broad standard governing the duty to defend provides vital protection for Florida's home builders.

Florida's broad duty to defend is consistent with the nationwide standard and is necessary for the protection of the state's home builders. Construction defect claims, governed by liberal notice pleading rules, need not include a detailed description of the damaged property.[2] Property damage not specifically alleged in the pleadings may nonetheless be identified in discovery, admitted at trial, and included in a final judgment. The underlying allegations must be read broadly, reasonable inferences drawn,[3] and all doubts and ambiguities resolved in the insured's favor to ensure the full measure of protection afforded by the policy.

The importance of an insurer-provided defense cannot be overstated, especially in construction litigation, which often involves numerous defendants

---

[2] *See*, *e.g.*, *Alderman v. Murphy*, 486 So. 2d 1334, 1338 (Fla. 4th DCA 1986) ("no allegation of special damages is required where only such damages as may reasonably be expected to follow the injury are claimed") (citation omitted).

[3] The district court erroneously claims "Florida law makes it clear that 'inferences are insufficient to trigger coverage.'" D.E. 30 at 10 (quoting *Fun Spree Vacations, Inc. v. Orion Ins. Co.*, 659 So. 2d 419, 421-22 (Fla. 3d DCA 1995) (citing *Marr Invs., Inc. v. Greco*, 621 So. 2d 477 (Fla. 4th DCA 1993)). The actual quote in *Fun Spree* – "[i]nferences are not sufficient" – did not originate from *Marr*, which found the insurer had a duty to defend. 621 So. 2d at 450. *Fun Spree*'s statement is unsupported dicta; reasonable inferences must be drawn if all doubts and ambiguities are to be resolved in the insured's favor. *Fun Spree* is also factually distinguishable because the underlying defamation claim was subject to heightened pleading standards. *See Buckner v. Lower Fla. Keys Hosp. Dist.*, 403 So. 2d 1025, 1027 (Fla. 3d DCA 1981) (defamation pleading must "identify the particular person to whom the remarks were made with a reasonable degree of certainty").

and complex factual disputes requiring expert testimony. One author estimates that "every dollar paid out to the construction claimant is matched by a dollar or more of defense costs" and explains that the strategic value of an insurer's defense may be even greater:

> With an insurer defending, adequate funds are available for a zealous defense. The insured need not accept an unfavorable settlement simply to avoid the high costs of litigation. The claimant, on the other hand, usually does not have the benefit of an insurer absorbing costs. If a claimant initiates early settlement negotiations, an insurer may wish to entertain them to avoid the anticipated costs of defending its insured. Early settlement, however, is almost always at the sole expense of the insurer. As a result, defense coverage provides profound leverage to an insured simply because of the high cost of construction litigation.

S. Turner, *supra* at § 7:1.

Judicial decisions that threaten to erode the insurer's duty to defend incentivize insurers to reserve their rights and litigate coverage in declaratory judgment actions against their insureds. Such coverage disputes create an inherent conflict of interest for an insurer controlling its policyholder's defense while seeking to absolve itself of the responsibility. The insurer is less likely to participate in settlement of the underlying claim when challenging its defense obligation. The policyholder, meanwhile, must litigate coverage while simultaneously facing the prospect of hiring independent counsel to defend the underlying claim. The judicial system is besieged by the increase in coverage litigation and its impediment to the progress or settlement of the underlying claims.

All of these negative effects militate in favor of protecting policyholders by maintaining Florida's broad standard governing an insurer's duty to defend.

C. Auto-Owners had a duty to defend Elite Homes because the alleged damage to "interior finishes" and "interior portions of the home" are fairly and potentially within coverage.

The parties do not dispute the scope of coverage in this case. Damage to the home itself is excluded from coverage by the policy's "Your Work" exclusion, while damage to any other property resulting from the allegedly defective construction, including items inside the home, falls within coverage.[4]

Auto-Owners, relying on a policy exclusion to escape its defense obligation, must prove the Croziers' allegations "are cast solely and entirely within the policy exclusion and are subject to no other reasonable interpretation." *Pub. Risk Mgmt. of Fla. v. One Beacon Ins. Co.*, 569 F. App'x 865, 872 (11th Cir. 2014). Elite Homes is entitled to a defense if the pleading can be construed to fairly and potentially allege any damage to property other than the home itself, and any doubts must be resolved in its favor.

[4] D.E. 30 at 6 ("the parties agreed at oral argument that this case essentially boils down to one issue: whether the Croziers' complaint . . . sufficiently alleges damage to 'other property,' such that the policy's 'your work' exclusion does not bar coverage"); *id.* at 8 ("any allegations of personal property damage would be 'other property' and trigger the duty to defend"); *see J.B.D. Constr., Inc. v. Mid-Continent Cas. Co.*, 571 F. App'x 918, 923 (11th Cir. 2014) ("a claim for the costs of repairing damage to other property caused by defective work does qualify as a claim for 'property damage.'").

The Croziers' pleading unequivocally establishes Auto-Owners' duty to defend under Florida law. The Croziers alleged that Elite Homes' defective construction of their home caused damages due to water intrusion. D.E. 1-1 at 3, ¶16. The Croziers specifically alleged that this damage extended to "other property," "interior finishes," and "interior portions of the home," as follows:

- "The water intrusion the CROZIERS have experienced has caused extensive damage *to other property* included (sic) the frame subsurface, sheathing insulation drywall, and *interior finishes*." *Id.* at 2, ¶ 14 (emphasis added).

- "As a result of ELITEs negligence, CROZIER has experienced excessive water intrusion, heavy microbial mold growth, and *damage to interior portions of the home*." *Id*. at 6 ¶ 30 (emphasis added).

These allegations, broadly construed under the standard applied in *Jones*, *Carithers* and *Trizec Properties*, allowed the Croziers to prove and recover damages to property other than the home itself, including personal property within the home. The pleading "fairly and potentially" implicates covered damages and accordingly requires Auto-Owners to defend Elite Homes.

Analogous Florida decisions demonstrate that the Croziers' allegations of interior damages are sufficiently broad to trigger the duty to defend, especially where water intrusion caused by defective construction is at issue. *See*, *e.g.*, *Voeller Constr., Inc. v. S.-Owners Ins. Co.*, No. 8:13-CV-3169-T-30MAP, 2015

WL 1169420, at *4 (M.D. Fla. Mar. 13, 2015); *J.B.D.*, 571 F. App'x 918; *Biltmore Constr. Co. v. Owners Ins. Co.*, 842 So. 2d 947, 949 (Fla. 2d DCA 2003).

In *Voeller*, the insurer had a duty to defend an underlying complaint against a general contractor even though there was no specific allegation of damage to property other than the contractor's work:

> Although the majority of the Underlying Action pleads damage to the defectively constructed Condominium and its components, it also alleges damage to the "Project" (an undefined term in the Underlying Action) and other components of the Project. Further, the KEG report attached to the Underlying Action references damage to the existing sea wall which was in place prior to construction, and water intrusion in the equipment and elevator rooms which may contain equipment added post-construction. These allegations reference damage to "other property" which triggers [the insurer's] duty to defend.

2015 WL 1169420, at *4. The court broadly – and correctly – construed the allegations of water intrusion to equipment and elevator rooms as potentially involving covered damage to the items that may have been in those rooms, though there was no allegation that any specific items of personal property were damaged.

In *J.B.D.*, a general contractor sought liability coverage for a suit alleging defective construction of a fitness center. 571 F. App'x at 920-21. The policy provided no coverage for "the cost to repair or replace any damage to the completed fitness center or its components." *Id.* at 925. But this Court held that the contractor was entitled to a defense because the underlying complaint referenced damage to "other property" and "the interior of the property":

> This reference to "other property" potentially included damage to non-fitness center property such as the adjacent Atrium building to which the fitness center was being connected or damage to other equipment, such as exercise machines, which may have been moved into the building post-construction. Count III of the Counterclaim, the negligence claim, also references "damages to the interior of the property, other building components and materials," and thus potentially includes allegations of damage to the same non-project property. Accordingly, these allegations of damage to property other than the fitness center . . . triggered [the insurer]'s duty to defend . . . .

Id. at 926. Like *Voeller*, the vague allegations of water intrusion damages were broadly construed to potentially include items of property inside the fitness center that would fall within coverage, though no specific damage to covered property was alleged.[5]

The district court's attempt to distinguish *Voeller* and *J.B.D.* from this case reveals its flawed reasoning. The district court claimed *Voeller* was "easily distinguished" because "a report attached to the complaint referenced damage to an existing sea wall, as well as water intrusion into equipment and elevator rooms *which might have contained* equipment added post-construction." D.E. 30 at 13 (emphasis added). The district court failed to consider that the "allegations" triggering coverage in *Voeller* were not allegations at all, but references to unpled damages found in a report attached to the complaint. And the nebulous reference of

---

[5] The alleged damage to "building components and materials" could not have triggered the duty to defend, since the court ruled that these materials were part of the defective construction and therefore not covered by the policy. 571 F. App'x at 925.

water intrusion into equipment and elevator rooms did not specifically identify the presence of any personal property, much less covered damages, as the district court observed. Yet the *J.B.D.* court found the insurer had a duty to defend because the vague allegations could be plausibly construed as damage to personal property.

The single distinguishing fact in *J.B.D.*, according to the district court, was that the contractor had attached the allegedly defective fitness center to an existing "Atrium" building.[6] D.E. 30 at 12. But no damage to the Atrium or any other covered property was specifically alleged. The court found a duty to defend based entirely upon the broadly construed allegations of damage to "other property" and "the interior of the property." The allegations in the Croziers' complaint are virtually identical to those in *J.B.D.* and more compelling than the unalleged references to property damage in *Voeller*, necessarily triggering Auto-Owners' duty to defend.

The district court did not consider the factually analogous decision in *Biltmore*, where the court found a duty to defend based on the plaintiff's general allegation that water intrusion caused "damage in its business and property." As in

[6] *J.B.D.* is an unpublished decision and therefore not controlling, but the district court's suggestion that its ruling on the duty to defend could be dismissed as dicta is misplaced. D.E. 30 at 11-12. This Court expressly held that the allegations of the underlying complaint established the duty to defend and reversed the judgment below refusing to grant summary judgment on this issue. 571 F. App'x at 926. *J.B.D.* is soundly reasoned and conforms to well-settled Florida law.

Voeller and *J.B.D.*, there was no specific allegation of covered property damage in *Biltmore*, yet the duty to defend arose because "the allegation that there was damage due to severe water infiltration c*ould obviously include* damage to property other than the improperly constructed windows and exterior walls, as it *could include* damage to carpeting and drywall." 842 So. 2d at 949 (emphasis added). The *Biltmore* court broadly construed this vague allegation of interior water intrusion as potentially involving damage to covered property within the structure.

At Auto-Owners' behest, the district court abandoned this parallel case law in favor of a factually inapposite Florida decision, *Miranda Construction Development, Inc. v. Mid-Continent Casualty Co.*, 763 F. Supp. 2d 1336 (S.D. Fla. 2010). The *Miranda* court found no duty to defend a general contractor from allegations of defective construction because the alleged damages were confined to the home itself and therefore entirely within the policy's Your Work exclusion. *Id.* at 1340 ("As the underlying complaint clearly alleges only damage to the Barron's home by Miranda, such damages are not covered under the policy's "your work" exclusion."). But the court construed only a single allegation of "damage to *other parts of the home*, including but not limited to the flooring, trusses, roof and walls," all of which related to the defective construction itself. *Id.* at 1339. The Croziers' dispositive allegations of damage to "interior portions of the home" and

"interior finishes" extend to property other than Elite Homes' work, distinguishing *Miranda* and mandating the opposite result.

As in *Voeller*, *J.B.D.*, and *Biltmore*, the Croziers' allegations of damage to their home's interior and finishes must be broadly construed to include damage to property other than the home itself, triggering Auto-Owners' duty to defend. The district court's judgment departs from existing Florida law by absolving Auto-Owners of its defense obligation despite allegations of damage to other property. If allowed to stand, the decision below threatens to erode the defense obligations that protect Florida's home builders, and will likely embolden the insurance industry to challenge coverage in more cases where imprecise allegations against the policyholder can be characterized as damage to its own work. This Court should reverse the district court's judgment, find Auto-Owners had a duty to defend Elite Homes in the underlying action, and remand for further proceedings consistent with its opinion.

CONCLUSION

The liberal pleading standards that apply to construction defect claims often leave home builders to defend against damages not specifically alleged. Florida's broad duty to defend protects the state's home builders by requiring insurers to defend whenever allegations against the insured show any possibility of covered damages, with all doubts and ambiguities resolved in the insured's favor.

Allegations against Elite Homes identified damage to "interior portions of the home" and "interior finishes" that could fall within coverage, and Auto-Owners should have been required to defend these claims. This Court should reverse the district court's judgment, find Auto-Owners had a duty to defend, and remand for further proceedings consistent with this opinion.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation set forth in FRAP 32(a)(7)(B). This brief contains 3,777 words.

Respectfully Submitted,

VER PLOEG & LUMPKIN, P.A.
100 S.E. Second Street, 30th Floor
Miami, FL 33131
(305) 577-3996
(305) 577 3558 *facsimile*

/s/ Stephen A. Marino, Jr.
Stephen A. Marino, Jr.
Florida Bar No. 79170
smarino@vpl-law.com
Benjamin C. Hassebrock
Florida Bar No. 76504
bhassebrock@vpl-law.com
Counsel for United Policyholders

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by CM/ECF and U.S. Mail on June 3, 2016 to:

Mark A. Boyle, Esq.
Molly Chafe Brockmeyer, Esq.
Alexander Brockmeyer, Esq.
Boyle & Leonard, P.A.
2050 McGregor Blvd.
Fort Myers, FL 33901
mboyle@insurance-counsel.com
mbrockmeyer@insurance-counsel.com
abrockmeyer@insurance-counsel.com
Counsel for Elite Homes, Inc.

J. Stephen O'Hara, Esq.
James D. Morgan, Esq.
O'Hara Law Firm, PA
4811 Beach Blvd., Suite 303
Jacksonville, FL 32207
sohara@oharalawfirm.com
jmorgan@oharalawfirm.com
Counsel for Auto-Owners Ins. Co.

Peter A. Robinson, Esq.
William Douglas Stanford, Jr. Esq.
The Robertson Firm
5547 AIA South, Suite 108
St. Augustine, FL 32080
peter@rotbertsonfirm.com
doug@robertsonfirm.com
Counsel for Joseph Crozier and Emily Crozier

/s/ Stephen A. Marino, Jr.
Stephen A. Marino, Jr.