

Defective Workmanship & Estoppel Coverage Update

January 16, 2023

Defective Workmanship and Estoppel – Eleventh Circuit (Alabama Law)

Barton v. Nationwide Mut. Fire Ins. Co.

No. 21-11009, 2023 WL 128921 (11th Cir. Jan. 9, 2023)

Robert and Mindy Barton (the Bartons) contracted with Stacy Alliston Design and Building, Inc. (Alliston) to build their custom home. Alliston hired various subcontractors to complete the work, some of which completed defective work, such as leaving holes in the roof and not properly installing windows. During their first year in the house, the Bartons noticed water intrusion through their roof and windows, which led to various structural issues.

While the house was being built, Alliston had four annual commercial general liability insurance policies issued by Nationwide Mutual Fire Insurance Company (Nationwide). The Nationwide policies covered property damage caused by an “occurrence,” which was defined as “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.” The Nationwide policies excluded property damage that was “expected or intended” to occur, or which resulted from fungi or mold.

The policies also excluded “‘property damage’ to ‘your work’ arising out of it or any part of it” if the damage was “included in the ‘products-completed operations hazard.’” “Products-completed operation hazard” was defined as “‘property damage’ occurring away from premises [Alliston] own[ed] or rent[ed] and arising out of ‘your product’ or ‘your work’ provided that the work was completed.” The Nationwide policies defined “your work” as “(1) work performed by Alliston or on its behalf and (2) materials, parts, or equipment provided in connection with this work.” Under the last two Nationwide policies, the “your work” exclusion also applied to damages arising from subcontractor work.

The Bartons brought claims for negligence and wantonness against Alliston in state court, arguing that Alliston damaged their home by violating building codes and industry standards in the construction and repair of the home and by mismanaging the subcontractors. Nationwide initially provided a defense for Alliston against the state court action, but eventually withdrew that defense. The Bartons moved for summary judgment on their claims, and the state court granted their motion.

The Bartons then sued Nationwide in the U.S. District Court for the Northern District of Alabama to satisfy the state court judgment against Alliston. Nationwide argued that the Bartons sought compensation for defective work, which was not covered under the Nationwide policies, and

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nonetheless, that the fungi or mold exclusion applied, and the last two Nationwide policies did not cover damages arising from subcontractor work.

In response, the Bartons argued that Nationwide was estopped from contesting coverage because it withdrew its defense of Alliston in the state court action. The Bartons also contended that the water intrusion into their home was an “accident” and, thus, qualified as an “occurrence” under the Nationwide policies. Furthermore, the Bartons maintained that all of the Nationwide policies covered subcontractor work because Alliston elected to buy products-completed operations coverage.

The district court entered judgment for Nationwide because the Bartons “failed to show what, if any, damages Nationwide [wa]s required to indemnify” and, thus, failed to meet their burden to prove coverage. As to their estoppel argument, the district court explained that the Bartons must have proven that the Nationwide policies covered the damages awarded by the state court, which they failed to do. The Bartons appealed the district court’s decision to the U.S. Court of Appeals for the Eleventh Circuit. On appeal, the Bartons argued that Nationwide was estopped from contesting coverage where it “failed to submit any evidence ... providing any reasons for withdrawing its defense of [Alliston] in the [underlying] action,” and “failed to show that it had reserved its rights to dispute coverage...”

The appellate court held that the Bartons did not meet their burden of proving estoppel where they did not submit any evidence to prove that Nationwide did not reserve its rights to dispute coverage for the underlying action. The Bartons further argued that the district court erred in concluding that their wantonness claims barred them from recovery. The appellate court reasoned that the Bartons could recover under the Nationwide policies only if Alliston could recover under the policies. However, because the record proved that Alliston acted intentionally in mismanaging its subcontractors, Alliston was not entitled to coverage under the Nationwide Policies where coverage applied only if the damages resulted from an accident – and not from something that Alliston was “fully aware” was “likely to result.” Thus, because Alliston was not entitled to coverage under the Nationwide policies, the Bartons could not obtain coverage under the Nationwide policies.

The appellate court concluded that the Bartons did not satisfy their burden to establish coverage, and that the district court did not err in its judgment for Nationwide.

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