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### ELEVENTH CIRCUIT RULES UNDER ALABAMA LAW THAT BREACH OF WARRANTY CLAIMS CONSTITUTE AN "OCCURRENCE" AND COVERAGE IS NOT BARRED BY A GENERAL LIABILITY POLICY'S CONTRACTUAL LIABILITY EXCLUSION

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The Eleventh Circuit Court of Appeals recently ruled, applying Alabama law, that a breach of warranty claim constitutes an "occurrence," triggering coverage under a general liability insurance policy, and that the policy's contractual liability exclusion does not bar coverage from any resulting liability.[1] The decision underscores that coverage exclusions must be construed narrowly and in favor of coverage, and that insurers must use precise language when they seek to exclude coverage for a particular type of exposure.

#### Background

St. Catherine of Siena Parish ("Parish") sued Kiker Corporation ("Kiker") for breach of implied warranty because Kiker failed to use reasonable skill when repairing the church's roof; the faulty repairs resulted in significant water damage. At trial, a state court jury awarded \$350,000 in damages to the Parish. Kiker sought coverage for the damages from its insurer, Pennsylvania National Mutual Casualty Insurance Company ("Penn National"), under its commercial general liability insurance policy.

Penn National filed a declaratory judgment against the Parish and Kiker alleging that it had no duty to indemnify Kiker under the policy. Penn National argued that the Parish's claims for property damage were not covered because Kiker's faulty workmanship was not an "occurrence," as that term was defined in the policy. Penn National also alleged that even if the faulty workmanship was an "occurrence," the claim against Kiker was a breach of warranty claim, excluded under the insurance policy's contractual liability exclusion. On cross-motions for summary judgment, the district court agreed with Penn National, awarding summary judgment in its favor and denying the Parish's motion.

On appeal, the Eleventh Circuit reversed the award of summary judgment for Penn National, vacated the denial of summary judgment to the Parish and remanded the case to the district court with the instruction to enter judgment in favor of the Parish.

#### Decision on Appeal

The Eleventh Circuit ruled that Kiker's faulty workmanship was an "occurrence" covered under the policy. Like most general liability policies, Penn National's policy defined an "occurrence" as "an accident." Penn National argued that Kiker's failure to use reasonable skill was not accidental because at all times it acted in a "deliberate and purposeful manner." While the circuit court agreed that if a contractor performs faulty workmanship, that work alone is not accidental, faulty work can itself lead to an accident if the faulty workmanship causes damage to other property. The court held that Kiker's faulty workmanship was an "accident" because it allowed water to seep through the roofs, which caused damage to the church's ceilings, walls, and floors. The resulting damage, therefore, was covered under the policy.

The court also found the policy's contractual liability exclusion to be inapplicable because Kiker's breach involved an implied warranty, not a contractual indemnity agreement. According to Penn National, even if there was an occurrence, the contractual liability exclusion operated to bar coverage for all claims arising out of any contractual agreement, including a breach of warranty. The Eleventh Circuit rejected that argument based on the Alabama Supreme Court's decision in *Townsend Ford, Inc. v. Auto-Owners Ins. Co.*[2] In *Townsend Ford*, the Alabama Supreme Court clarified that contractual liability exclusions bar coverage for claims arising out of contractual agreements to indemnify; however, although an express or implied warranty creates a duty of care, that duty does not constitute an assumption of liability.

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Nor does it constitute an agreement. The court held, therefore, that the contractual liability exclusion did not apply in this case because the Parish's claim for a breach of implied warranty did not arise from an indemnity agreement, but instead was premised on a misrepresentation of Kiker's ability to repair the church's roof.

### Insurance Implications

The Eleventh Circuit's ruling in *Penn National* is consistent with the general purpose of contractual liability exclusions, which is to ensure that policyholders do not expand the scope of coverage agreed upon in the policy. The decision serves as a reminder, however, that coverage exclusions must be construed narrowly and, when questions arise regarding the scope of the exclusion, in favor of coverage. This means that exclusionary provisions will not be interpreted to have a broader effect than their plain language reasonably dictates. Rather, as the *Penn National* court explained, where an insurer seeks to bar coverage for a particular liability, such as a breach of warranty, the insurer should say so conspicuously in the policy.

### Notes

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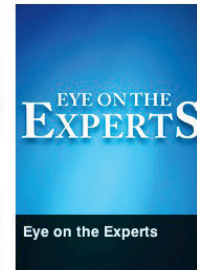
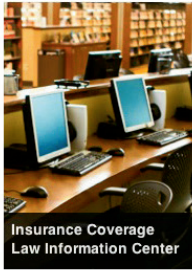
[1] See *Pa. Nat'l Mut. Cas. Ins. Co. v. St. Catherine of Siena Parish*, No. 14-12151, 2015 U.S. App. LEXIS 9659 (11th Cir. June 10, 2015).

[2] 656 So. 2d 360, 364 (Ala. 1995).

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