

SUPREME COURT OF VIRGINIA

Uniwest Construction, Inc. v. Amtech Elevator Services, Inc.; Amtech Elevator Services, Inc. v. Uniwest Construction, Inc.; Federal Insurance Company v. Amtech Elevator Services, Inc., 281 Va. 509

714 S.E.2d 560 (2011) · No. Record Nos. 091495, 091496, 091521 · Decided April 21, 2011

SUMMARY

The Supreme Court of Virginia granted rehearing and remanded the case for the circuit court to determine the scope of liability under subdivisions E-4 and E-7 of Amtech's commercial umbrella insurance policy. The court directed consideration of Amtech's liability for failing to defend and indemnify Uniwest, AIU's liability, and any damages including Uniwest's settlement and defense costs. The court withdrew Part II(D) of its prior opinion and clarified that Amtech's duty to defend and indemnify Uniwest was established to the extent caused by Amtech's negligent acts or omissions.

CASE DETAILS

COURT	Supreme Court of Virginia
JURISDICTION	Virginia
DECIDED	April 21, 2011
DOCKET	Record Nos. 091495, 091496, 091521
DISPOSITION	remanded
PROCEDURAL POSTURE	Order on petitions for rehearing following the Supreme Court of Virginia's prior decision affirming in part and reversing in part the Circuit Court of Fairfax County's judgment and remanding for further proceedings.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Uniwest Construction, Inc., Amtech Elevator Services, Inc., n/k/a ABM Amtech, Inc., Federal Insurance Company v. Amtech Elevator Services, Inc., n/k/a ABM Amtech, Inc., Uniwest Construction, Inc., Amtech Elevator Services, Inc., n/k/a ABM Amtech, Inc., et al.

TOPICS

[insurance coverage](#)[duty to defend](#)[duty to indemnify](#)[appellate procedure](#)[construction law](#)

PRACTICE AREAS

insurance coverage

construction law

commercial litigation

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the circuit court should determine whether the underlying Bruce and Stinson claims gave rise to liability arising out of operations conducted by Amtech or on Amtech's behalf under Subdivision E-7.
2. Whether a finding of relative liability is required under Subdivision E-7.
3. What extent of liability Amtech and AIU have for failing to defend and indemnify Uniwest under Subdivisions E-4 and E-7.
4. Whether any damages award should include Uniwest's settlement with Bruce and Stinson and the cost of Uniwest's defense, to the extent those costs were not already paid.

HOLDINGS

1. When the circuit court fails to decide preserved legal and factual questions because it erroneously resolves a threshold coverage issue, the Supreme Court remands for the circuit court to consider those questions in the first instance.
2. Amtech had a duty to defend and indemnify Uniwest to the extent that the underlying liability was caused in whole or in part by negligent acts or omissions of Amtech.
3. On remand, the circuit court must determine whether and to what extent AIU is liable under Subdivisions E-4 and E-7 and, if Uniwest and its insurers are entitled to damages, must consider both Uniwest's settlement with Bruce and Stinson and qualifying defense costs not already paid by Amtech and its insurers.

KEY QUOTATIONS

"Because the circuit court did not decide the scope or extent of liability under Subdivision E-7, the Court remands the matter "for consideration of the legal and factual efficacy" of the questions presented in the petitions for rehearing."

"The question of Amtech's liability is settled: "Amtech [had] a duty to defend and indemnify Uniwest," 280 Va. at 443, 699 S.E.2d at 231, "to the extent caused in whole or in part by negligent acts or omissions of" Amtech."

FACTUAL BACKGROUND

Uniwest sought coverage and related relief arising from claims by Bruce and Stinson, including the costs of defending and settling those claims. The dispute involved Amtech's commercial umbrella insurance policy issued by AIU, including Subdivisions E-4 and E-7, and Amtech's failure to defend and indemnify Uniwest. The circuit court erroneously concluded that Uniwest was not an insured under Subdivision E-7 and therefore did not decide the scope or extent of liability under that provision.

PROCEDURAL HISTORY

The Supreme Court of Virginia previously affirmed in part and reversed in part a judgment against Amtech, ABM Industries, AIU Insurance Company, and others. Uniwest and Federal Insurance Company sought rehearing on the scope of liability under Subdivision E-7 of Amtech's commercial umbrella policy. The court granted rehearing, determined that the circuit court had not reached those questions because it incorrectly held that Uniwest was not an insured under Subdivision E-7, withdrew Part II(D) of its prior opinion, and remanded for further factual and legal determinations.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The circuit court shall determine the legal and factual efficacy of the questions presented in the petitions for rehearing; determine the extent of Amtech's liability to Uniwest for failure to defend and indemnify Uniwest; determine whether and to what extent AIU is liable under Subdivisions E-4 and E-7 consistent with the prior opinion as amended and the order; and, if damages are warranted, consider Uniwest's Bruce and Stinson settlement and defense costs for which Amtech and AIU are liable, to the extent those costs have not already been paid by Amtech and its insurers.

CASES CITED

- Uniwest Construction, Inc. v. Amtech Elevator Services, Inc., 280 Va. 428, 699 S.E.2d 223 (2010)
- Burwell's Bay Improvement Ass'n v. Scott, 277 Va. 325, 332, 672 S.E.2d 847, 851 (2009)

OPINION

PER CURIAM.

714 S.E.2d 560 (2011) 281 Va. 509 UNIWEST CONSTRUCTION, INC., et al. Appellants, v. AMTECH ELEVATOR SERVICES, INC., n/k/a ABM Amtech, Inc., et al. Appellees. Amtech Elevator Services, Inc., n/k/a ABM Amtech, Inc., et al. Appellants, v. Uniwest Construction, Inc., et al. Appellees. Federal Insurance Company, Appellant, v. Amtech Elevator Services, Inc., n/k/a ABM Amtech, Inc., et al. Appellees.

Record Nos. 091495, 091496, 091521. Supreme Court of Virginia. April 21, 2011. By unanimous opinion issued September 16, 2010, this Court affirmed in part and reversed in part the judgment of the Circuit Court of Fairfax County against Amtech Elevator Services, Inc., n/k/a ABM Amtech, Inc. ("Amtech"), ABM Industries, Inc., and AIU Insurance Company ("AIU") and remanded the case for further proceedings.

280 Va. 428, 446, 699 S.E.2d 223, 232 (2010). Thereafter, Uniwest Construction, Inc. ("Uniwest"), and Federal Insurance Company filed petitions for rehearing requesting the Court to consider "whether the underlying claims by Bruce and Stinson gave rise to `liability arising out of operations conducted by [Amtech] or on [Amtech's] behalf'" and to "request that the Court make

clear that a finding of 'relative liability' is not required with respect to E-7; instead, the finding on remand with respect to E-7 should be whether Uniwest's 'liability [arose] out of operations conducted by [Amtech] or on [Amtech's] behalf.'" (Alterations in original.)

By order entered January 18, 2011, the Court granted the petitions. The questions presented by the petitions for rehearing were not reached by the circuit court because it erroneously determined that Uniwest was not an insured under Subdivision E-7 of Amtech's commercial umbrella insurance policy from AIU.[1] Because the circuit court did not decide the scope or extent of liability under Subdivision E-7, the Court remands the matter "for consideration of the legal and factual efficacy" of the questions presented in the petitions for rehearing.[2] *Burwell's Bay Improvement Ass'n v. Scott*, 277 Va. 325, 332, 672 S.E.2d 847, 851 (2009) (remanding for consideration of preserved questions preempted by the circuit court's erroneous holding on a threshold question).

The Court withdraws Part II(D) of its opinion of September 16, 2010. On remand the circuit court shall determine the extent of Amtech's liability to Uniwest for its failure to defend and indemnify Uniwest.[3] The court also shall determine whether and to what extent AIU is liable under Subdivision E-4 and Subdivision E-7, consistent with this Court's opinion of September 16, 2010, as amended, and this order.

If the court determines that Uniwest and its insurers are entitled to an award of damages, consideration of such damages shall include both Uniwest's settlement with Bruce and Stinson and the cost of Uniwest's defense in the lawsuit leading to that settlement for which Amtech and AIU are liable, to the extent such costs have not yet been paid by Amtech and its insurers.

This order shall be published in the Virginia Reports and shall be certified to the said circuit court.

NOTES [1] Uniwest is an insured under both Subdivision E-4 and Subdivision E-7 of the policy. 280 Va. at 445, 699 S.E.2d at 232.

[2] The Court expresses no opinion as to whether relative liability is relevant to Subdivision E-7.

[3] The question of Amtech's liability is settled: "Amtech [had] a duty to defend and indemnify Uniwest," 280 Va. at 443, 699 S.E.2d at 231, "to the extent caused in whole or in part by negligent acts or omissions of" Amtech. *Id.* at 433, 699 S.E.2d at 225.