

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.

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.