

Trigger of Coverage – Construction Defects

Mid-Continent Cas. Co. v. Siena Home Corp., 2011 WL 2784200 (M.D. Fla. 2011).

The Court concludes that the “manifestation” of “occurrence” of property damage, for purposes of determining coverage... is the time that such damage was discernable and reasonably discoverable either because it was open and obvious or upon a prudent engineering investigation, and not the time of actual discovery where the two circumstances come about in sequence at different times.

Issue No. 1: 2010 discovery of property damage beneath windows because of reverse lapping during installation. Not discovered and not visible before 2010. Requested interrogatories:

Q. #1

Did the amount of damages you awarded plaintiffs include damages with respect to the property damage discovered beneath the windows in 2010, allegedly caused by reverse lapping of flashing in the installation?

Yes No

Q. #2

If you answered yes to Question No. 1, do you find that the investigation that led to the discovery of that aspect of damage by plaintiffs' contractor in 2010 was prudent, or do you find that such investigation should have taken place earlier? If earlier, do you find that such investigation would have been prudent sometime between August 1, 2006 and 2010, or sometime prior to August 1, 2006?

2010 Between August 1, 2006 and 2010 Prior to August 1, 2006

Issue No. 2: 2010 discovery of property damage behind the stucco on all sides of the house. Not discovered and not visible before 2010. Requested interrogatories:

Q. #3

Did the amount of damages you awarded plaintiffs include damages with respect to the property damage discovered behind the stucco on all sides of the house in 2010?

Yes No

Q. #4

If you answered yes to Question No. 3, do you find that the investigation that led to the discovery of that aspect of damage by plaintiffs' contractor in 2010 was prudent, or do you find that such investigation should have taken place earlier? If

earlier, do you find that such investigation would have been prudent sometime between August 1, 2006 and 2010, or sometime prior to August 1, 2006?

2010 Between August 1, 2006 and 2010 Prior to August 1, 2006

Issue No. 3: The cost to replace all of the windows in 2010. Requested interrogatories:

Q. #5

Did the amount of damages you awarded include damages with respect to the cost to replace all of the windows in 2010?

Q. #6

If you answered yes to Question No. 5, do you find that the windows themselves were physically damaged, or that they were inherently defective even at the time of installation, or that the home should have included higher quality windows? (you may select more than one answer).

Physically Damaged

Inherently Defective even at time of installation

Home Should Have Included Higher Quality Windows