



November 12, 2013

Via Electronic Filing

Attn: Valerie L. Geddis
John Ley, Clerk of Court
U.S. Court of Appeals for the 11th Circuit
56 Forsyth St., N.W.
Atlanta, GA 30303

Re: J.B.D Construction, Inc. v. Mid-Continent Casualty
Appeal No.: 13-10138-F

Dear Ms. Geddis and Mr. Ley:

Pursuant to *Federal Rule of Appellate Procedure* 28(j) and Eleventh Circuit I.O.P. 28-6, appellant J.B.D. Construction, Inc. ("JBD") provides this Response to the appellee's November 7, 2013 Citation of Supplemental Authorities.

In *Nationwide Mutual Fire Insurance Co. v. Advanced Cooling & Heating, Inc.*, ___ So. 3d ___, 2013 WL 5807880 (Fla. 4th DCA Oct. 30, 2013), the Florida Fourth District's analysis turned upon one uncontroverted fact: the customer never alleged that Advanced's installation of a compressor (either a defective or unnecessary component) caused property damage to any of the customer's other tangible property. *Id.*, at *2. The Court opined that absent such allegation, Nationwide had no duty to defend Advanced against the customer's "breach of contract" and "faulty workmanship" claims. *Id.*

The Court's analysis in *Advanced Cooling* squarely supports JBD's position in this case. Sun City's Counterclaim unequivocally and explicitly alleges "damage" to Sun City's "other property"; e.g., allegations that JBD violated § 553.84 *Fla. Stat.* (which imposes liability for damage to property other than the subject construction project). *See*, Dkt. 62-17 [Exhibit "1", ¶¶ 16, 20], at pp. 20-21.

Moreover, and contrary to the appellee's argument that JBD cannot point to any actual physical damage separate from the Fitness Center, the Record is replete with undisputed proof of physical damage to the pre-existing Atrium Building, which was outside the scope of JBD's construction contract. *See*, Dkts. 62-2, 62-3 [Exhibit "A"], 62-6 [Exhibit "I"], at p. 7; 62-12 [Exhibits "J" and "K"], at pp. 1, 9. JBD's subsequent settlement with Sun City included the cost of repairing this physical damage. *See*, Dkts. 62-6 [Exhibits "H" and "I"], at pp. 1, 8; 62-12 [Exhibit "K"], at p. 32; 62-13 [Exhibit "K"], at p. 11; 62-15 [Exhibit "Q"], at p. 19.

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Accordingly, *Advanced Cooling* provides additional support for JBD's argument in Sections I.B(ii) [pp. 25-29] and III [pp. 36-40] of the Brief, and Sections I.A [pp. 3-4] and III [p. 20] of the Reply Brief.

Sincerely,

VAKA LAW GROUP, P.L.

/s/ Gregory L. Evans

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GLE/jo

cc: Maureen G. Percy, Esq. and Ronald Kammer, Esq., Counsel for Appellee
(via electronic mail and filing)