



# ALABAMA CONSTRUCTION LAW NEWSLETTER



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## Forum Selection Clause

**Ex Parte American Builders & Contractors Supply Co., Inc.,  
2021 WL 5145294 (Alabama, November 5, 2021)**

American Builders & Contractors Supply Co., Inc. (ABC) entered into a contract to provide roofing materials to a middle school building in Florida. The Alabama Municipal Insurance Corporation (AMIC) sued ABC, claiming that ABC's delivery of the materials caused the roof to collapse. The contract contained a clause that allowed ABC to choose the forum for any legal action arising from the contract. ABC filed a motion to enforce the forum-selection clause, arguing that AMIC's claims fell under the contract and should be heard in

Florida where ABC's branch was located. The circuit court denied ABC's motion, stating that AMIC's claims were unrelated to the purchase agreement. ABC appealed. The appeals court agreed with the lower court's opinion. One judge dissented, stating that AMIC's claims were based on the same factual allegation and therefore, were within the scope of the forum-selection clause.

# Notice of Claim to Agent and Not Insurance Company Roofing: Policy Exclusion Enforced

**Owners Insurance Company v. Sidener, 2022 WL 17716905  
(Alabama, December 15, 2022)**

Auto Owners Insurance Company argued that notice to an independent agent was insufficient to satisfy the condition precedent to coverage requiring an insured contractor to provide notice of a claim to the insurance company.

The insurance company relied on the principle that independent agents are not agents of the insurer. The court agreed that was typically the case. However, the insured argued that the insurance company instructed its insureds to provide notice of claims to independent agents on things like its website.

The court was concerned about the possibility that owners was perpetrating a fraud on its insureds and the courts by the inconsistent messages. Owners informed the court that it would withdraw its prior position concerning notice to the independent agent.

A second insurance company, State National, filed a motion for summary judgment, claiming that it was not required to defend or indemnify a subcontractor (Custom View) of its insured contractor (H&H Construction).

The court reasoned that the plaintiffs' claim arose from Custom View's roofing work, which was excluded from coverage under the stand-alone roofing provision of H&H's insurance policy. The court found that the interpretation of the insurance policy is a matter of contract, and any exclusions from coverage are strictly construed. The insurer is obligated to defend where the allegations of the complaint against the insured are ambiguous or incomplete with respect to the issue of insurance coverage.

The court concluded that if Custom View's roofing work is not



covered, then H&H cannot be an additional insured or indemnitee. The stand-alone roofing exclusion stated that the insurance does not apply to bodily injury or property damage arising out of stand-alone roofing, except for roof decking and plywood installation work done as part of new construction, add-ons, or remodels. The usual and common meaning of "stand-alone" is not connected to or requiring connection to something else to function.

# Jury Must Decide Whether There is Insurance Coverage for Hurricane Damage

**Arch Specialty Insurance Company v. BP Investment Partners, LLC 2022 WL 17441985 (11th Circuit, December 6, 2022)**

The case involved a dispute between an insured church and its property insurer over a claim for damages caused by Hurricane Sally. The insurer denied part of the church's claim for damages, alleging that some of the damage had been caused by pre-existing issues, rather than the hurricane. The church sued the insurer, al-

leging breach of contract and bad faith denial of coverage. The church and the insurance company both had experts who disagreed on the cause of damage to the property. As such the court concluded that there were material issues of fact that must be resolved by a fact finder or jury. The court also held that the insurer's



er's position in denying part of the church's claim was fairly debatable and, therefore, the insurer was not liable for bad faith denial of coverage under Alabama law.

# Court Denies Coverage and Finds Insured Breached Insurance Contract

**Arch Specialty Insurance Company v. BP Investment Partners, LLC**  
**2022 WL 17441985 (11th Circuit, December 6, 2022)**



This is a summary of a court case in the United States Court of Appeals, Eleventh Circuit. The case involves Arch Specialty Insurance Company (Arch) and BP Investment Partners, LLC (BPI), who owned a hotel that sustained damage in a hurricane.

Arch investigated the claim and paid only a small portion of it, alleging that BPI failed to fulfill its duty to cooperate with the investigation and intentionally concealed

or misrepresented facts related to the claim. Arch then filed a lawsuit against BPI seeking a declaration that it had no obligation to pay any additional amounts under the insurance policy and brought a claim under Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA").

The district court dismissed the FDUTPA claim but proceeded to trial on the declaratory judgment claim, and a jury returned a verdict in Arch's favor. Specifically, the jury found that BPI lied about something important related to a hotel and didn't fulfill their duties after a loss.

BPI appealed on three issues, but the court found that any errors made were harmless or moot.



In this case TCC, Inc. (TCC) was the general contractor for the construction of a new home in Tuscaloosa County. Ivan's Painting entered into a subcontract with TCC to paint and clean window units. The subcontract required Ivan's Painting to purchase an insurance policy that named TCC as an ad-

## Scratching of Window Glass Not Covered Under Contractor's Policy

**Frankenmuth Mutual Insurance Company v. Ivan's Painting, LLC**  
**2022 WL 17813753 (N.D. Alabama, December 19, 2022)**

ditional insured. Ivan's Painting allegedly damaged eighty-seven windows at the new construction site. The homeowners demanded that TCC replace the damaged windows. As a result, TCC and Ivan's Painting presented a claim to Frankenmuth Mutual Insurance Company for the cost of replacing the damaged window units. Frankenmuth responded to the claims by indicating that TCC may qualify as an additional insured under the policy. However, it "effectively denied coverage. The court

### FEATURED PRESENTATION

**Larry Logsdon**  
 Speaker

Larry Logsdon was a featured speaker at the 2023 Spring Meeting of the Gulf South Chapter of the International Concrete Repair Institute that was held March 8-9 at the IP Casino Resort Spa in Biloxi, Mississippi. Featuring speakers discussing current legal issues facing the construction industry, the conference is an event where attendees learned about trends and issues relevant to concrete repair.

To download a copy of Larry's presentation, please click [here](#).



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