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Faulty Construction Not Covered Loss Under Nationwide Builders' Policy, Pennsylvania Federal Judge Rules

Two homebuilders insured by Nationwide Mutual Insurance Company and accused of poor workmanship in the case of *Robert A. Bealer, et al. v. Nationwide Mutual Insurance Co., et al.,* E.D. Pa., No. 16-3181, Nov. 16, 2016 (Baylson, J.), are entitled to no coverage. United States District Judge Michael M. Baylson ruled earlier this week that such workmanship did not constitute a fortuitous "occurrence" which would trigger coverage under the policy.

William Tierney III sued Robert and Hannelore Bealer, owners of Affordable Homes, in Pennsylvania State Court for foundation cracks and water leakage problems in a home they built for Tierney. The complaint alleged that a May 2014 flooding of the home's basement was due to faulty construction. In response to Bealers' requests for defense and indemnity in that case, Nationwide declined, citing no triggering occurrence under policy despite the Bealers' claims that the problems were actually caused by superseding events including heavy storms and shifting ground.

The Bealers sued Nationwide for coverage in 2015, and the suit was removed to Federal Court.

Judge Baylson, citing Pennsylvania law requiring analysis of the underlying complaint only, found that Nationwide was within its rights to deny coverage under the language of the policy:

> The Bealers' alternative explanation for the cause of Tierney's property damage is outside the scope of this analysis because it is not pled in the underlying complaint. . . . Tierney's factual allegations are that a failure to properly design and construct the property caused the damage at issue. These are faulty workmanship claims, and the Bealers' attempts to reframe them as based on an 'occurrence' due to the 'degree of fortuity' involved in the intervening factors that allegedly led to the damage, are unavailing.

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