

Florida Supreme Court Rules in Favor of Wiley Rein & Fielding Insurance Client in Significant Case

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Washington, DC—The Florida Supreme Court ruled in favor of the insurers in *Swire Pacific Holdings, Inc. v Zurich Insurance Company*, a case concerning builder's risk coverage of a large condominium project that was argued on behalf of Zurich by Thomas W. Brunner, the head of the Insurance Practice at Wiley Rein & Fielding. He was assisted by partner Leslie A. Platt and associate Gary Seligman. Janet Brown of Boehm, Brown, Seacrest & Fischer also represented Zurich in the case.

Swire, the developer of the project, had sought coverage for the costs it incurred to remove substandard concrete work.

This opinion resulted from the certified questions of the U.S. Court of Appeals for the 11th Circuit, which determined that no Florida appellate precedent existed on three subjects. The Florida high court rejected unanimously Swire Pacific's claim, ruling on two important points broadly affecting property insurance nationwide. (It did not reach the third question.)

First, the Court held that, where an exclusion for design defects contains an exception for "ensuing loss", the cost of fixing that defect cannot be a covered ensuing loss. Many exclusions in property policies have such exceptions.

Second, the Florida court holds that a sue-and-labor clause that provides for the reimbursement of expenses incurred by a policyholder to *mitigate* a loss cannot be applied to expenses to *prevent* a loss. This is an important ruling in an area, sue-and-labor,

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that has received a lot of attention in recent years because of its unsuccessful use by policyholders seeking coverage for their Y2K expenses.