

## Eleventh Circuit Finds No “Property Damage” Where Defective Component Failed to Cause Damage to Other Non-Defective Components

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The United States Court of Appeals for the Eleventh Circuit was recently faced with this question in *Tricon Development of Brevard, Inc. v. Nautilus Insurance Company*, No. 21-11199, 2021 U.S. App. LEXIS 27317 (11th Cir. Sep. 10, 2021). *Tricon* arose out of the construction of a condominium. Tricon was hired to serve as general contractor for the project and hired a subcontractor to fabricate and install metal railings. The railings installed by the subcontractor were defective and damaged, improperly installed, and failed to meet the project’s specifications. Tricon filed an insurance claim with Nautilus Insurance Company, the subcontractor’s commercial general liability insurer, for the cost to remove and replace the railings.[1]

Relying on *Auchter*, the court concluded that the repair and removal of defective work does not constitute “property damage”. The court rejected Tricon’s contention that *Auchter* failed to consider that the repair and removal of defective components may result in a “loss of use of tangible property that is not physically injured”, and thus, qualify as “property damage”. It noted that the *Auchter* court held that “after interpreting the policy as a whole [and] endeavoring to give every provision its full meaning and operative effect” there was no coverage for the defective installation. The Eleventh Circuit therefore concluded that “the *entire* definition of ‘property damage’ in the post-1986 standard form commercial general liability policy must fail to cover the kinds of costs that Tricon incurred from its subcontractor’s deficient work.”

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[1] Tricon was an additional insured under the subcontractor’s policy for liability for “property damage” caused, in whole or in part by the subcontractor’s direct or vicarious acts or omissions.

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