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Now, a Subcontractor's Indemnification Payment can be Used to Satisfy a General Contractor's SIR

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The recent Florida Supreme Court opinion *Intervest Construction of Jax, Inc. v. General Fidelity Ins. Co.*, 133 So. 3d 494 (Fla. 2014) illustrates the effect contract interpretation principles can have on the evaluation and scope of insurance policies and coverage. *Intervest* concerned the application of a Self-Insured Retention Endorsement ("SIR"), and whether a general contractor or its insurer was obligated to fund a settlement for a bodily injury claim.

During construction of a home, the general contractor hired a subcontractor to install attic stairs. After construction was complete, the homeowner fell from the stairs, sustained injuries, and ultimately sued the general contractor. The general contractor sought indemnification from the non-party subcontractor under the terms of their subcontract agreement. At the time of the accident, the general contractor held a CGL insurance policy containing a \$1 million SIR. The SIR amended the policy to provide coverage only after the general contractor paid \$1 million toward a covered loss. The subcontractor also maintained a CGL policy, but the general contractor was not an additional insured on that policy.

The parties ultimately settled the homeowner's claim for \$1.6 million. The subcontractor's insurer paid \$1 million to the general contractor to help settle the indemnification claim, which the general contractor, in turn, paid to the homeowner. However, the general contractor and its insurer disagreed about who between them was responsible for the remaining \$600,000. Eventually, each paid \$300,000, and reserved their rights to seek reimbursement from the other.

In a subsequent federal court action, the general contractor and insurer pursued declaratory judgment claims, each seeking a ruling that the other was obligated to fund the \$600,000 settlement payment. The general contractor argued that it had satisfied its SIR by paying the homeowner the \$1 million indemnification payment it had received from its subcontractor. The insurer argued that the subcontractor's \$1 million payment did not satisfy the SIR, because the money originated from the subcontractor, and the SIR policy language required the general contractor to pay the SIR out of its own funds. The federal district court granted summary judgment in the insurer's favor, and the general contractor appealed. On appeal, the Eleventh Circuit found no controlling precedent under Florida law and certified determinative questions to the Florida Supreme Court.

The Florida Supreme Court sided with the general contractor, and against the insurer. Citing contract interpretation principles which construe ambiguous insurance policies against insurers, the Supreme Court found that the policy language allowed the general contractor to use the subcontractor's indemnification payment to satisfy the general contractor's SIR. As a related aside, the Court also held that the policy's transfer of rights clause did not address the priority of reimbursement, and thus, the policy language did not abrogate Florida's "made whole doctrine" which entitled the general contractor to be made whole first before its insurer.

Though *Intervest* leaves many questions unanswered, it underscores the importance that basic contract interpretation principles have on insurance coverage disputes.

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