

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond, on Thursday, the 21st day of April, 2011.

Uniwest Construction, Inc., et al. Appellants,

against Record No. 091495
Circuit Court No. CL-2008-5909

Amtech Elevator Services, Inc., Appellees.
n/k/a ABM Amtech, Inc., et al.

Amtech Elevator Services, Inc., Appellants.
n/k/a ABM Amtech, Inc., et al.

against Record No. 091496
Circuit Court No. CL-2008-5909

Uniwest Construction, Inc., et al. Appellees.

Federal Insurance Company Appellant,

against Record No. 091521
Circuit Court No. CL-2008-5909

Amtech Elevator Services, Inc., Appellees.
n/k/a ABM Amtech, Inc., et al.

Upon a Petition for Rehearing

By unanimous opinion issued September 16, 2010, this Court affirmed in part and reversed in part the judgment of the Circuit Court of Fairfax County against Amtech Elevator Services, Inc., n/k/a ABM Amtech, Inc. ("Amtech"), ABM Industries, Inc., and AIU Insurance Company ("AIU") and remanded the case for further proceedings. 280 Va. 428, 446, 699 S.E.2d 223, 232 (2010). Thereafter, Uniwest Construction, Inc. ("Uniwest"), and Federal

Insurance Company filed petitions for rehearing requesting the Court to consider "whether the underlying claims by Bruce and Stinson gave rise to 'liability arising out of operations conducted by [Amtech] or on [Amtech's] behalf' " and to "request that the Court make clear that a finding of 'relative liability' is not required with respect to E-7; instead, the finding on remand with respect to E-7 should be whether Uniwest's 'liability [arose] out of operations conducted by [Amtech] or on [Amtech's] behalf.' " (Alterations in original.) By order entered January 18, 2011, the Court granted the petitions.

The questions presented by the petitions for rehearing were not reached by the circuit court because it erroneously determined that Uniwest was not an insured under Subdivision E-7 of Amtech's commercial umbrella insurance policy from AIU.¹ Because the circuit court did not decide the scope or extent of liability under Subdivision E-7, the Court remands the matter "for consideration of the legal and factual efficacy" of the questions presented in the petitions for rehearing.² Burwell's Bay Improvement Ass'n v. Scott, 277 Va. 325, 332, 672 S.E.2d 847, 851 (2009) (remanding for consideration of preserved questions preempted by the circuit court's erroneous holding on a threshold question).

¹ Uniwest is an insured under both Subdivision E-4 and Subdivision E-7 of the policy. 280 Va. at 445, 699 S.E.2d at 232.

² The Court expresses no opinion as to whether relative liability is relevant to Subdivision E-7.

The Court withdraws Part II(D) of its opinion of September 16, 2010. On remand the circuit court shall determine the extent of Amtech's liability to Uniwest for its failure to defend and indemnify Uniwest.³ The court also shall determine whether and to what extent AIU is liable under Subdivision E-4 and Subdivision E-7, consistent with this Court's opinion of September 16, 2010, as amended, and this order. If the court determines that Uniwest and its insurers are entitled to an award of damages, consideration of such damages shall include both Uniwest's settlement with Bruce and Stinson and the cost of Uniwest's defense in the lawsuit leading to that settlement for which Amtech and AIU are liable, to the extent such costs have not yet been paid by Amtech and its insurers.

This order shall be published in the Virginia Reports and shall be certified to the said circuit court.

A Copy,

Teste:

Patricia L. Harrington, Clerk

³ The question of Amtech's liability is settled: "Amtech [had] a duty to defend and indemnify Uniwest," 280 Va. at 443, 699 S.E.2d at 231, "to the extent caused in whole or in part by negligent acts or omissions of" Amtech. Id. at 433, 699 S.E.2d at 225.