

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

ASSURANCE COMPANY OF AMERICA)	No. ED96627
and DHP SYSTEMS, Respondents,)	
)	Appeal from the St. Louis
vs.)	County Circuit Court
)	
SECURA INSURANCE COMPANY,)	
and MISSOURI VALLEY GLASS, Appellants.)	Filed: July 10, 2012

This appeal arises from an equitable garnishment action. Plaintiff DHP Systems, Inc., a contractor on a construction project, and its insurer, Assurance Company of America, filed their garnishment suit against sub-contractor Missouri Valley Glass and its insurer, Secura Insurance Company, to collect on a judgment entered in favor of DHP and against MVG in the underlying litigation. The court in that underlying judgment concluded that DHP was entitled to indemnity and contribution from MVG for monies expended by DHP in defending against, and settling, claims by the builder for damages due to MVG's work. The court in the garnishment action entered summary judgment in favor of the plaintiffs, and Secura appeals. The issues in this case are three-fold: first, whether a contract and agreement to indemnify existed between DHP and MVG; second, whether there was an "occurrence" within the terms of the policy issued to MVG by Secura; and third, whether the policy's "your work" exclusion nevertheless defeated coverage.

JUDGMENT REVERSED; CAUSE REMANDED

DIVISION TWO HOLDS: First, because Secura abandoned its insured, we hold it is therefore bound by the underlying trial court's finding of liability against MVG, including the court's determination that MVG agreed to indemnify DHP. Second, because the summary-judgment record shows that the damages sustained were the result of MVG's negligence and contains no evidence that MVG foresaw or expected the damages, we hold that the damages were caused by an "occurrence." Third, because the "your work" exclusion only references damage to work performed by MVG and does not reference damage to work performed by others, we hold that the exclusionary provision does not bar coverage for damages to work or materials other than that performed or furnished by the insured, MVG. Thus, the summary-judgment court's legal conclusions were correct. However, because neither the underlying trial court nor the summary-judgment court made a finding that delineates between the amount of damages to MVG's work and the amount of damages to other parts of the property, and because the record contains insufficient evidence from which to make such a determination, we reverse the grant of summary judgment and remand the case for further proceedings.

Opinion by: Lawrence E. Mooney, J. Kathianne Knaup Crane, P.J., concurs and
Kenneth M. Romines, J., dissents in separate opinion.

Attorney or Appellants: William C. Crawford

Attorney for Respondent: Russell F. Watters

**THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT.
IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND
SHOULD NOT BE QUOTED OR CITED.**