

September 26-29, 2024 | Sheraton Boston Hotel



09/28/2024

E&O Mock Trial

10:00 AM - 12:00 PM

Ed Landers

2 CEUs

Sponsored by Swiss Re Corporate Solutions Americas

Bru Plumbing Contractors

v.

Anti-Villain Brokers

E&O Mock Trial

9/28/24

10:00 AM – 12:00 PM

CEUs: 2

Sponsored by:



Swiss Re

Corporate Solutions

Presented by:



Despicable Coverage

After not succeeding in becoming the greatest villain in the world, Melodius Bru (“Bru”) opened Bru Plumbing Contractors, specifically servicing the hospitality industry. Bru’s plumbers, affectionately referred to as minions, were not the most skilled plumbers. After sustaining losses due to a claim on or about October 15, 2018, arising from its faulty workmanship at the Lair Hotel in Somerville, MA, Bru Plumbing requested that its insurance broker, Born Wild (“Wild”) of the Wild Insurance Group, procure coverage for faulty workmanship. Wild partnered with Sidney Bottomsup (“Bottomsup”) of Anti-Villain Brokers, which is a surplus lines broker in order to seek coverage beyond the regular insurance markets.

Bottomsup obtained quotes from four different insurers, one of which did not include a faulty workmanship exclusion. However, Wild requested on November 16, 2018 the inclusion of prior acts coverage besides the Lair Hotel. Anti-Villain viewed this as an unusual request since there was no prior professional liability coverage in place. The four carriers which provided quotes all declined to include prior acts coverage. Bottomsup obtained a fifth quote from Despicable Underwriters on November 25, 2018, advising Wild to “review these terms carefully as they may differ from those requested, and pay especially close attention to the subjectivities required to bind.” After reviewing a specimen copy of the Policy, Wild expressed on November 26, 2018, concern with the faulty workmanship exclusion in the Policy. Bottomsup acknowledged the concern, but noted that Despicable Underwriters specifically carved faulty workmanship back for professional services as defined in the Policy. Bottomsup quoted the definition of professional services set forth in the Policy. On November 27, 2018, Wild emailed Bottomsup the following: “I understand the carve back on the Faulty Workmanship Exclusion in that we must prove the claim falls under the definition of ‘Professional Services’. For our insured to prove the claim falls under ‘Professional Services’, am I correct that we are relying on ‘including observation of construction, issuance of change order and clarification’ to trigger this policy to provide a defense and/or settlement for our insured?” Bottomsup responded: “You are correct in your assessment below the carve-back applies for professional services which does include ‘observation of construction, issuance of change orders and clarification.’”

Wild emailed Bottomsup on November 27, 2018 that Bru Plumbing would like to go forward with the Despicable Underwriters quote. However, Wild proposed specific language with respect to Known Loss and the work at the Lair Hotel to be excluded as Bru Plumbing maintained that the prior faulty work and loss was the only work that was done incorrectly by the minions. Once it reviewed Bru Plumbing’s loss runs, Despicable Underwriters sought on November 29, 2018 to delete the language “construction management services including observation of construction” from the definition of professional services in the Policy. Bottomsup responded “[t]hat is the only language that would apply to them.” Despicable Underwriters’ representative responded: “I can’t ignore the claim experience and may not have even quoted this if we had this info so would you be able to live with \$100,000 ded. No other changes?” Bottomsup responded: “Can you cut my commission to 10% and live with it for this year and we can reassess at renewal. This agent is a nightmare and I would rather not take commission if that works for you.”



On November 30, 2018, Wild emailed Bottomsup: “Can you tentatively bind this and I will review with our insured and confirm Monday?” On December 3, 2018, Bottomsup emailed Wild a Confirmation of Coverage that states in part: “Please review the above carefully; terms and/or conditions may differ from those requested in your submission.” Wild directed Bottomsup to bind the Despicable Underwriters Policy, with a policy period from November 28, 2018 to November 28, 2019.

In December 2018, a second claim against Bru Plumbing arose at the Lair Hotel from shower valves in all 147 units that needed to be replaced. Apparently, the minions used banana peels instead of plumber’s tape to wrap the valves. Despicable Underwriters denied coverage based on the definition of “professional services” set forth in the Policy. The Policy has a faulty workmanship exclusion which carves coverage back in for Bru Plumbing for “professional services” as defined by the Policy. In its coverage letter, Despicable Underwriters indicated that the Policy has a \$75,000 deductible and denied coverage for the claim since Bru Plumbing is a plumbing contractor and did not provide any design services or construction management services which Despicable Underwriters maintained was required to constitute “professional services” under the Policy. Bru Plumbing alleges that Anti-Villain Brokers stated that coverage would be afforded to Bru Plumbing for faulty workmanship because Bru Plumbing was engaged in the professional services of “observation of construction, issuance of change orders and clarification.” Bru Plumbing maintains that those specific functions, however, are set forth in the definition as part of defining the scope of “construction management services” which are considered “professional services” and not as independent matters undertaken by a plumbing contractor such as Bru Plumbing. Bru Plumbing maintains that based upon the Professional Liability Application provided by Bru Plumbing, Anti-Villain Brokers knew that Bru Plumbing’s operations did not include any construction management since Bru Plumbing disclosed that all of its \$90 million in revenue would be derived from “General Construction only (No design or CM responsibilities ...).”

Bru Plumbing has brought a Complaint against Anti-Villain Brokers, alleging claims for negligence, breach of contract, and violation of M.G.L. c. 93A for alleged unfair and deceptive acts. Bru Plumbing claims that it sustained a loss of \$194,694 to repair the faulty shower valves at the Lair Hotel for which coverage was denied by Despicable Underwriters under the Policy. Bru Plumbing also brought a separate Complaint against Wild Insurance for failing to procure coverage for both faulty workmanship losses at the Lair Hotel. Bru Plumbing and Wild Insurance settled that action, but both maintain that the entire settlement is attributable to the first faulty workmanship loss at the Lair Hotel prior to the inception of the Policy. Bru Plumbing has retained Dr. Jamie Nefario at its expert, while Anti-Villain Brokers has retained Mallory Da Vinci as its expert.

