

# FITZGERALD SECURES REVERSAL ON APPEAL

*Pennsylvania - Fowler Hirtzel McNulty & Spaulding, LLC*

Jill Fitzgerald successfully argued an appeal to the Superior court of Pennsylvania, resulting in a reversal of the trial court's decision and the entry of summary judgment on behalf of the firm's client, who had been sued for indemnity by its insured in an underlying lawsuit.

The underlying action encompasses a complaint filed against the insured, a contractor. The contractor had been retained to install a pool in the Plaintiffs' back yard, and provided a quote, after which an agreement was signed, and a deposit was provided by the Plaintiffs. In anticipation of the pool's installation, Plaintiffs engaged a separate contractor to build a retaining wall and made other modifications to their property. After this, they sought permits for the pool from their municipality, and learned that the zoning regulations would not permit the construction. Their application for a zoning variance was denied.

The underlying Complaint alleged that the contractor did not advise Plaintiffs to investigate local zoning laws prior to advising that a swimming pool could be installed, and set forth claims for unjust enrichment, violation of the Home Improvement Consumer Protection Act, and violation of the Unfair Trade Practices and Consumer Protection Law.

The contractor sought defense and indemnification from the firm's client under a commercial general liability insurance policy. The client denied coverage, asserting that the Plaintiffs' complaint did not allege an "occurrence" as defined in the policy, nor did the alleged damages constitute "property damage" as defined in the policy.

After the denial, the contractor filed an instant action for declaratory judgment requiring defense and indemnification. After the trial court entered an order denying the client summary judgment, Fitzgerald appealed the decision to the Superior Court, where she successfully argued that the trial court erroneously relied on the policy's definitions of "your product" and "your work" (which include the insured's "representations"), maintaining those definitions apply only to exclusions and not to extension of coverage.

The Superior Court agreed with Fitzgerald's argument that the Plaintiffs' claims cannot constitute an "occurrence", as they were not accidental but rather contractual and intentional, and found that the policy provides no coverage. The trial court's order was vacated, and the case was remanded for an entry of summary judgment in the client's favor.

## FEATURED ATTORNEY(S):



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