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SUPREME COURT OF LOUISIANA

No. 2013-C-190

DAN VEULEMAN & JODY VEULEMAN

VERSUS

MUSTANG HOMES, LLC, ET AL.

ON WRIT OF CERTIORARI TO
THE COURT OF APPEAL, THIRD CIRCUIT

PER CURIAM.

This case involves the burden of proof on a motion for summary judgment.

The insurer bears the burden of proving that a loss falls within a policy exclusion. **Blackburn v. National Union Fire Ins. Co.**, 00-2668 (La. 4/3/01), 784 So.2d 637, 641. The policy in this case contains a “work product” exclusion; however, the exclusion has a “subcontractor” *exception*, thus work performed by a subcontractor, rather than an employee of the insured, would be covered under the policy.

On motion for summary judgment the insurer introduced its policy but no evidence to show who performed the work at issue. The plaintiffs, applicants herein, introduced an affidavit that the work was performed by subcontractors. The court of appeal disallowed the affidavit and concluded that the applicants “have not established their claims are excepted from the exclusion.”

If the exception is met, the exclusion does not apply. The insurer retains the burden of proving that the exception is not met in order to show that the exclusion does apply. The insurer offered no proof to accomplish its burden, and we believe that the court of appeal erroneously shifted the burden of proof on the motion for summary judgment to the applicants. We therefore vacate the summary judgment

rendered in this matter and remand for further proceedings.

**WRIT GRANTED; APPELLATE COURT DECISION REVERSED;
DISTRICT COURT SUMMARY JUDGMENT VACATED.**