

IN THE SUPREME COURT OF NORTH CAROLINA

No. 168A10

FILED: 8 OCTOBER 2010

HUBER ENGINEERED WOODS, LLC

v.

CANAL INSURANCE COMPANY

Appeal pursuant to N.C.G.S. § 7A-30(2) from the decision of a divided panel of the Court of Appeals, ___ N.C. App. ___, 690 S.E.2d 739 (2010), affirming in part and vacating in part an order of summary judgment entered on 15 December 2008 by Judge Jesse B. Caldwell, III in Superior Court, Mecklenburg County. Heard in the Supreme Court 8 September 2010.

Robinson Bradshaw & Hinson, P.A., by R. Steven DeGeorge, for plaintiff-appellee.

Smith Moore Leatherwood LLP, by Robert D. Moseley, Jr., pro hac vice, C. Fredric Marcinak III, Sidney S. Eagles, Jr., and Elizabeth Brooks Scherer, for defendant-appellant.

Nexsen Pruet, PLLC, by James W. Bryan and E. Taylor Stukes, for Trucking Industry Defense Association, amicus curiae.

PER CURIAM.

For the reasons stated in the dissenting opinion, we reverse the decision of the Court of Appeals holding that defendant has a duty to defend plaintiff in the underlying action at issue. We affirm the decision of the Court of Appeals vacating the portion of the trial court's order of summary judgment that found defendant has a duty to indemnify plaintiff in the underlying action. This case is remanded to the Court of

Appeals for further remand to the Superior Court, Mecklenburg County, for proceedings not inconsistent with this opinion.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.