

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 26, 2014

Lyle W. Cayce
Clerk

No. 11-40512

EWING CONSTRUCTION COMPANY, INCORPORATED,

Plaintiff - Appellant

v.

AMERISURE INSURANCE COMPANY,

Defendant - Appellee

Appeal from the United States District Court
for the Southern District of Texas

Before JOLLY, DAVIS, and BARKSDALE, Circuit Judges..

PER CURIAM:

Consistent with the January 17, 2014 Texas Supreme Court opinion and response¹ to our certified question,² we VACATE the judgment of the district court granting summary judgment to defendant, Amerisure Insurance Co. (“Amerisure”), on grounds that coverage was excluded under its contractual liability exclusion. We REMAND the case to the district court for further proceedings, reserving to the parties any claims, defenses, and arguments other than those related to the contractual liability exclusion.

VACATED AND REMANDED.

¹ Ewing Const. Co., Inc. v. Amerisure Ins. Co., 12-0661, __ S.W.3d __, 57 Tex. Sup. Ct. J. 195 (Tex. Jan. 17, 2014).

² Ewing Construction Co., Inc. v. Amerisure Ins. Co., 690 F.3d 628, 633 (5th Cir. 2012).