

**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 response<sup>1</sup> to our certified question,<sup>2</sup> 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.

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

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