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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

NAVIGATORS INSURANCE COMPANY,

 Plaintiff,

 vs.

THOMPSON BUIILDERS, INC., and DOES 1
through 20, inclusive.

 Defendants.

Case No.: 11-CV-381 JM

**ORDER REQUIRING FURTHER
BRIEFING**

Docket No. 28

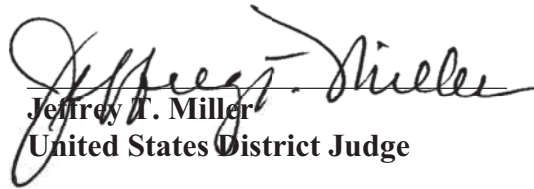
On February 17, 2012, Plaintiff Navigators Insurance Company (“Navigators”) filed a motion for summary judgment against Thompson Builders, Inc. (“TBI”). A hearing was held on April 9, 2012. Pursuant to this order, the parties shall submit supplemental briefs of no more than five pages on or before April 25, 2012.

TBI’s opposition asserts that Navigators’ argument concerning the insurance policy’s limitation to coverage of work on residential buildings is improper because it was not raised in the complaint. It is true that a party should be allowed to recover even if it has not identified the correct basis for a claim at the outset, “provided always that a late shift in the thrust of the case will not prejudice the other party in maintaining his defense upon the merits.” Mir v. Fosburg, 646 F.2d 342, 347 (9th Cir. 1980) (quoting Wright & Miller, Fed. Prac. & Proc. § 1219 at 145).

1 The parties' briefs have not adequately addressed this issue. Navigators states that "TBI has had
2 notice of this argument" and that "there is no possible prejudice that could have been suffered by
3 TBI," but fails to explain the basis for its position. Nav. Reply Brief at 8. The issue was not
4 reached at the hearing, and TBI has not had an opportunity to respond to the question of whether
5 lack of notice of Navigators' theory created prejudice during discovery or otherwise. The parties
6 are directed to address this issue in their supplemental briefs.

7 **IT IS SO ORDERED.**

8 DATED: April 17, 2012

9 
10 Jeffrey T. Miller
11 United States District Judge