**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**July 31, 2017**

**Diane M. Fremgen**
**Clerk of Court of Appeals**

**NOTICE**

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**Appeal No. 2015AP423** **Cir. Ct. No. 2012CV8929**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

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**KAITLIN WOODS CONDOMINIUM ASSOCIATION, INC.,**

**PLAINTIFF-APPELLANT,**

**V.**

**KAITLIN WOODS, LLC, TSP, INC., MIDWEST BUILDING SYSTEMS, INC., TRI STAR BUILDERS, OOSTBURG CONCRETE PRODUCTS, INC., PATRIOT CONSTRUCTION SERVICES, REGENT INSURANCE COMPANY, AFFORDABLE ROOFING, INC., ROOFERS, LLC, ADS PLASTER, LLC, BOSLEY BROTHERS PLASTERING, LLC, ARCHITECTURAL WALL SYSTEMS, LLC, MASONRY SPECIALISTS, INC., BRUENIG ENGINEERING, EMC INSURANCE COMPANY, OWNERS INSURANCE COMPANY AND AMERICAN FAMILY MUTUAL INSURANCE COMPANY,**

**DEFENDANTS,**

**NAUTILUS INSURANCE COMPANY,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. CONEN, Judge. *Affirmed*.

Before Higginbotham, Sherman and Blanchard, JJ.

¶1 HIGGINBOTHAM, J. This is an insurance coverage dispute between a condominium association and the insurer of a general contractor involving the proper interpretation of a synthetic stucco exclusion in a commercial general liability (CGL) insurance policy. The contractor, Kaitlin Woods, LLC, held a CGL policy issued by Nautilus Insurance Company at a time when the LLC oversaw construction of condominiums now owned by members of the Kaitlin Woods Condominium Association. The Association sued the LLC and Nautilus, alleging that as a result of the LLC's poor management of the construction projects, and defective work by the LLC's subcontractors, water leaked through the exteriors of all of the condominium buildings, causing property damage, and therefore, the Association is entitled to recover damages under the policy as a third party.[1]

¶2 Nautilus moved for summary judgment in the circuit court, arguing that it has no duty to defend and indemnify the LLC based on an endorsement in the CGL policy that excludes coverage for claims of defective work on any part of the exterior of a building on which an "exterior insulation and finish system" had been applied, as in this case. As shorthand, we refer to the "exterior insulation and finish system" at issue as "synthetic stucco" because the exclusion refers to this term, and we refer to the endorsement as the "synthetic stucco exclusion." The

[1] Only Nautilus responds to the appeal of the Association, and not the LLC.

court agreed with Nautilus in its interpretation of the synthetic stucco exclusion, rejecting the Association's arguments to the contrary.

¶3 On appeal, the Association argues that the synthetic stucco exclusion does not bar coverage for the LLC against the Association's damage claims. As it did in the circuit court, Nautilus argues that the exclusion bars the Association's damage claims against the LLC and its subcontractors. We conclude that, under a plain language interpretation, the synthetic stucco exclusion bars coverage for the Association's claims against the LLC. We therefore affirm.

## BACKGROUND

¶4 The following allegations are taken from the Association's operative complaint against the LLC and Nautilus, which is the only pleading or submission at issue under the "four corners rule," as we explain in the discussion section below.

¶5 The LLC was the developer of all of the condominium buildings owned by members of the Association, which were built between 1999 and 2011. More specifically, the LLC "provided design and development services, supervised construction, and coordinated independent subcontractors and/or material suppliers for the construction of the [buildings]." As for the actual construction work, the construction was performed by subcontractors, whom the LLC hired and supervised.

¶6 After the buildings were constructed, "numerous problems, errors and defects were discovered," which caused water leakage at multiple places in each of the buildings, resulting in water damage to physical property. The LLC and its subcontractors negligently caused the leaks as a result of defective design

and workmanship, and deficient construction. The LLC used an exterior system that was defective in that it had a faulty moisture barrier, which "allowed penetration of the outer skin of the [synthetic stucco] cladding[,] resulting in water penetration."

¶7 The LLC held a CGL policy issued by Nautilus that related to the construction of the condominium buildings. We quote the pertinent policy language below, but for now, it is sufficient to know that the policy included the synthetic stucco exclusion: an endorsement that excluded coverage for claims of defective work by the LLC, or done on behalf of the LLC, on any part of the exterior of a building on which synthetic stucco had been applied. The exterior finishes of all of the buildings include a combination of materials, which in each case includes synthetic stucco, as defined in the CGL policy.

¶8 Having summarized the pertinent allegations in the Association's complaint and the outline of pertinent policy terms, we move to the procedural history.

¶9 The circuit court granted Nautilus's motion to stay and bifurcate the action in order to determine if the Association's claims were covered by the LLC's CGL policy. Nautilus moved for summary judgment on the ground that, under the unambiguous terms of the CGL policy, including the synthetic stucco exclusion, it had no duty to defend or indemnify the LLC for the damages alleged by the Association. The court granted this motion on the grounds that the synthetic stucco exclusion bars coverage. Based on its entry of summary judgment in favor of Nautilus, the court dismissed the Association's claims against Nautilus. The Association appeals.

## DISCUSSION

¶10 We review a circuit court's grant of summary judgment de novo, applying the same methodology as the circuit court. ***State v. Bobby G.***, 2007 WI 77, ¶36, 301 Wis. 2d 531, 734 N.W.2d 81.

¶11 In this case, we interpret the CGL policy to determine the scope of Nautilus's duty to defend and indemnify the LLC. This is a question of law that we review de novo. ***Estate of Sustache v. American Family Mut. Ins. Co.***, 2008 WI 87, ¶18, 311 Wis. 2d 548, 751 N.W.2d 845

¶12 The duty to defend "is determined by comparing the allegations of the complaint to the terms of the insurance policy," and "is triggered by the allegations contained within the four corners of the complaint." ***Id.***, ¶20. "It is the *nature* of the alleged claim that is controlling, even though the suit may be groundless, false, or fraudulent." ***Id.***

¶13 When interpreting an insurance policy, we "determine and carry out the intentions of the parties as expressed by the language of the insurance policy." ***Day v. Allstate Indem. Co.***, 2011 WI 24, ¶27, 332 Wis. 2d 571, 798 N.W.2d 199. "The language in an insurance contract should be given its ordinary meaning—the meaning a reasonable person in the position of the insured would give the terms." ***Acuity v. Society Ins.***, 2012 WI App 13, ¶12, 339 Wis. 2d 217, 810 N.W.2d 812 (quoted source omitted). We do not interpret insurance policies in a way that forces an insurer to provide coverage for risks that it did not contemplate or underwrite because it has not received premiums for those risks. ***American Family Mut. Ins. Co. v. American Girl, Inc.***, 2004 WI 2, ¶23, 268 Wis. 2d 16, 673 N.W.2d 65.

¶14 "To determine whether a claim is covered by a liability insurance policy, courts use a three-step process." ***Acuity***, 339 Wis. 2d 217, ¶14. We first determine if the policy makes an initial grant of coverage. ***Id***. If there is an initial grant of coverage, we determine whether there is an applicable exclusion. ***Id***. If an exclusion applies, the final step is to determine whether there is an exception to an applicable exclusion that reinstates coverage. ***Id***.

¶15 There is no dispute between the parties on appeal that the CGL policy provides initial coverage to the LLC for the damages alleged in the complaint. As we will discuss in greater detail below, Nautilus argues that the synthetic stucco exclusion applies to deny coverage, and the Association contends that an exception to the synthetic stucco exclusion applies. However, as we will explain, the Association forfeited this argument about an exception because it failed to preserve the issue by raising it in the circuit court. Aside from its forfeited argument, the Association does not contend that any exception to the synthetic stucco exclusion applies. Accordingly, our analysis is limited to the second step: whether the synthetic stucco exclusion bars coverage for the Association's claims against the LLC.

1. *The Synthetic Stucco Exclusion*

¶16 We begin by construing the synthetic stucco exclusion. The synthetic stucco exclusion reads in pertinent part:

> **EXCLUSION — EXTERIOR INSULATION AND FINISH SYSTEM (EIFS)**
>
> This endorsement modifies coverage provided under the following:
>
> COMMERCIAL GENERAL LIABILITY COVERAGE PART PRODUCTS/COMPLETED OPERATIONS COVERAGE PART

SCHEDULE

Description of your work and/or your product:

1. The design, manufacture, construction, fabrication, preparation, installation, application, maintenance or repair, including remodeling, service, correction or replacement of an "exterior insulation and finish system'' (commonly referred to as synthetic stucco) or any part thereof, or any substantially similar system or any part thereof including the application or use of conditioners, primers, accessories, flashing, coatings, caulking or sealants in connection with such a system.

2. Any work or operations with respect to any exterior component, fixture or feature of any structure if an "exterior insulation and finish system" or similar type of product or installation is used on any part of that structure.

This exclusion applies to "your work" and/or "your product" described in Paragraph 1. or Paragraph 2. above performed by you or on your behalf.

….

This Insurance does not apply to "bodily injury" or "property damage" included in the "products/completed operations hazard'' and arising out of "your work" and/or "your product" shown in the Schedule.

¶17 As reflected in what we have just quoted, the CGL policy defines the excluded "your work and/or your product" through the language in Paragraph 1. and Paragraph 2.

*Paragraph 1. and Paragraph 2.*

¶18 Paragraph 1. provides a list of particular activities related to synthetic stucco itself, such as designing, fabricating, constructing, applying, and installing the synthetic stucco, that define "your work and/or your product." To repeat, the complaint alleges that all of the condominium buildings at issue were constructed with synthetic stucco applied to their exteriors.

¶19 Paragraph 2. is written more broadly than Paragraph 1. Rather than limiting its application to a narrow list of particular types of "work," Paragraph 2. plainly applies to *any* work on the exterior of *any* part of a building when, at the time the building is constructed, synthetic stucco was installed on the exterior of that building. To clarify, looking to the Association's allegations of defective workmanship on the condominium buildings, under Paragraph 2., the exclusion would apply to work on any exterior part of the buildings, such as a window flashing, because synthetic stucco was installed on all of the buildings when they were constructed.

¶20 To complete our interpretation of the first part of the synthetic stucco exclusion, when Paragraph 1. and Paragraph 2. are read in context with the "this exclusion applies" paragraph immediately following Paragraph 2., the exclusion applies to "any" "work" performed by the LLC or on behalf of the LLC, such as work performed by subcontractors, on any exterior part of a building when synthetic stucco is installed on any part of that building.

¶21 With those understandings about the identified language in the exclusion, we now compare the synthetic stucco exclusion to the allegations in the operative complaint. *See* ***Estate of Sustache***, 311 Wis. 2d 548, ¶21 (To determine whether the allegations in a complaint trigger an insurer's duty to defend, "[c]ourts liberally construe the allegations … and assume all reasonable inferences."). In the operative complaint, the Association alleged in the first cause of action that the LLC breached the implied warranty of good workmanship, fitness, and habitability due to defective work performed by the LLC and the subcontractors that the LLC hired and supervised to perform the exterior work on all of the condominium buildings, and also alleged that synthetic stucco was applied to all of the buildings when the LLC constructed them. The Association also alleged in the second cause

of action that the defective work performed on the exterior of all of the buildings was caused by negligence by the LLC and the subcontractors the LLC hired and supervised.

¶22 We conclude that the allegations in the operative complaint, liberally construed, are subject to the synthetic stucco exclusion, and for that reason, Nautilus has no duty to indemnify and defend the LLC against the Association's allegations. The Association's alleged damages arise from work performed on the exterior of the condominium buildings, all of the condominium buildings contain synthetic stucco, and the alleged defective work was performed by the LLC or on behalf of the LLC by the subcontractors it hired and supervised.

¶23 We next turn our attention to the Association's arguments challenging the above interpretation of the synthetic stucco exclusion. However, before we proceed to the merits of the Association's arguments, we first address a threshold issue concerning whether the synthetic stucco exclusion should be given a narrow construction.

¶24 "Exclusions are narrowly or strictly construed against the insurer if their effect is uncertain." ***American Girl, Inc.***, 268 Wis. 2d 16, ¶24. Based on this rule, the Association argues that we should narrowly construe the synthetic stucco exclusion because the effect of the exclusion is uncertain. The Association asserts that the uncertainty stems from the fact that a broad reading of the synthetic stucco exclusion would preclude coverage for a building with a roof leak "even if that building had merely one small portion of [synthetic stucco] on it." In addition, citing ***Donaldson v. Urban Land Interests, Inc.***, 211 Wis. 2d 224, 230-33, 564 N.W.2d 728 (1997), the Association argues that applying the exclusion would render the promise of coverage under the policy to be a "dead letter,"

allowing the insurer to be free from its responsibility to provide coverage, in conflict with the intent of the insured.

¶25 Nautilus argues that the synthetic stucco exclusion is unambiguous, and therefore, we have no reason to consider a narrow interpretation. We agree.

¶26 As we have indicated, we narrowly and strictly construe insurance policy exclusions if the effect of the exclusion is uncertain. ***American Girl, Inc.***, 268 Wis. 2d 16, ¶24. This requires us to determine whether the effect of the exclusion here is uncertain. If not, we apply the general rule that if the language in an insurance policy is unambiguous we interpret and enforce unambiguous policy language "according to its literal terms." ***Gorton v. Hostak, Henzl & Bichler, S.C.***, 217 Wis. 2d 493, 506, 577 N.W.2d 617 (1998).

¶27 Nautilus correctly construes the exclusion, based on its unambiguous language, as barring coverage for a building with a roof leak if synthetic stucco is applied to any part of that building. Therefore, case law requires that we apply the synthetic stucco exclusion "according to its literal terms." *See* ***id.***

¶28 Having concluded that the synthetic stucco exclusion is unambiguous and applies here, we now address the Association's arguments that the exclusion does not bar coverage and explain why we reject its arguments.

2. *Damages Stemming from Design, Project Management, or Supervision are Barred from Coverage*

¶29 The Association argues that, under a reasonable reading of Paragraph 2. of the exclusion, it does not bar coverage for "services that do not include physical work," such as "design, supervisory, and project management services on elements other than the [synthetic stucco]." The Association argues

that if Nautilus intended to exclude coverage for design, project management, and supervisory services, language would have been included in Paragraph 2. to that effect, as the parties did in Paragraph 1. We reject this argument.

¶30 We conclude that a reasonable insured would understand that the phrase "[a]ny work or operations" in Paragraph 2. means that the exclusion applies to *all* work that was performed by the LLC with respect to any "exterior component, fixture or feature," including design, project management, and supervisory services. Any other reading would be unreasonable.

¶31 The Association skims past plain meanings of the words "any," "work," and "operations" in Paragraph 2. Our supreme court has defined the word "any" (albeit in a different context) as "'one or some indiscriminately of whatever kind'; and 'unmeasured or unlimited in amount, number, or extent.'" ***Burbank Grease Servs., LLC v. Sokolowski***, 2006 WI 103, ¶22, 294 Wis. 2d 274, 717 N.W.2d 781 (quoting WEBSTER'S NEW COLLEGIATE DICTIONARY 51 (5th ed. 1977)).

¶32 As to the definitions of "work" and "operations," neither word is defined in the liability or synthetic stucco exclusion provisions of the policy. However, looking at Paragraph 1. and Paragraph 2. together, a reasonable insured would understand that the activity signified in Paragraph 2. by "[a]ny work or operations" is intended to be a broader and more sweeping concept than the specific list of activities (design, manufacture, install and so on) in Paragraph 1. The words "work" and "operations," within the context of Paragraph 2., are broad terms, and therefore, must have a different meaning than "your work" in Paragraph 1.

¶33 Applying the ***Burbank Grease Services, LLC*** court's definition of "any" in the context of Paragraph 2., and what a reasonable insured would understand the words "work" and "operations" in Paragraph 2. would mean in the context of the entire exclusion and the policy as a whole, a reasonable insured would believe that the type of "work" and "operations" excluded under the synthetic stucco exclusion include design, ordering supplies and materials, hiring and supervising subcontractors, and otherwise managing the construction of the condominiums. *See* ***id.***

¶34 Thus, we conclude that, based on a reasonable reading of the plain terms of Paragraph 1. and Paragraph 2. of the synthetic stucco exclusion, non-physical work performed by the LLC, such as design, supervisory, and management services are excluded from coverage.

3. *Whether "Moisture Barriers" and "Windows" are Exterior Components of the Buildings Falls Outside Reviewing the Four Corners of the Complaint*

¶35 The Association argues that the synthetic stucco exclusion does not apply to aspects of the complaint that refer to problems with what the Association deems *interior* components or features of the buildings, such as moisture barriers and windows, and not *exterior* components or features. However, our review of the complaint reveals that the Association exclusively alleges leakage based on defects to exterior features of the buildings and does not allege leakage based on defects to interior features of the buildings. That is, the complaint seeks damages for the leakage of water and moisture that travels from the outsides of the buildings to the insides of the buildings, passing through exterior features of the buildings. The Association fails to explain why that does not settle the issue under the four corners rule, which we have explained above.

4. *"Structure" as Used in the Synthetic Stucco Exclusion Reasonably Means a "Building"*

¶36 The Association argues that the word "structure" in Paragraph 2. is ambiguous and could mean a "particular element of the building, not the entire building." According to the Association, a proper interpretation of the word "structure" in Paragraph 2. is that the exclusion would not apply to defective work performed on elements of the building where synthetic stucco has not been applied, such as a roof. Stated differently, under the Association's interpretation of the word "structure" in Paragraph 2., the exclusion would apply only to damages caused by defects in elements of the buildings that used synthetic stucco. We reject this argument because the meaning of "structure" as it is used in the exclusion is not ambiguous.

¶37 First, from the context of all terms in the exclusion it is obvious that the word "structure" means building, not part of a building. When read in context of Paragraph 2., a reasonable reading of the word "structure" refers to an entire building and not part of a building because it applies if synthetic stucco "is used on any part of that structure." Second, we believe that this is how the word "structure" is reasonably and commonly understood. *See* WEBSTER'S NEW COLLEGE DICTIONARY (2005) (defining "structure" as "something built or constructed, as a building or dam"); BLACK'S LAW DICTIONARY (6th ed. 1990) ("an edifice or building of any kind").

5. *Coverage is Barred for Damages "Arising Out" of the Use of the Synthetic Stucco*

¶38 The Association argues that the exclusion should be interpreted to exclude coverage only for those damages "caused by" the synthetic stucco. According to the Association, this interpretation "comports with" language in the

exclusion "that states the damages must 'aris[e] out of' the [synthetic stucco]," and there must be a causal relationship between the synthetic stucco and the alleged property damage for the exclusion to apply.

¶39 However, Nautilus correctly points out that the synthetic stucco exclusion does not state that property damages must "aris[e] out of the [synthetic stucco]," but rather, the exclusion unambiguously states that coverage "'does not apply to … 'property damage' … arising out of 'your *work.*'" (Emphasis added.) Addressing the Association's "causal connection" argument, Nautilus argues that there must be a causal connection between the "property damage" and "any work," as defined in the exclusion, on "'any exterior component, fixture or feature of any structure if [synthetic stucco] is used on any part of that structure,'" and that in this case, the requisite causal connection exists. We agree with Nautilus that the Association's construction of the last sentence in the synthetic stucco exclusion as only applying to property damage *caused by* synthetic stucco is wrong. (Emphasis added.)

6. *The Definition of "Your Work" in the Synthetic Stucco Exclusion Only Applies to the Exclusion*

¶40 The Association argues that the definition of "your work" in the exclusion should be read together with the "Damage to Your Work" exclusion in Paragraph 2.1. of the liability provisions, and that when these provisions are read together, defective work completed by the LLC's subcontractors would be excepted from the synthetic stucco exclusion. The "Damage to Your Work" exclusion includes an exception for work completed by subcontractors. Thus, the Association reasons, the exclusion does not preclude coverage because the alleged damages were caused by work done by subcontractors on behalf of the LLC. The

Association applies this same reasoning in what appears to be a separate argument in asserting that the LLC is covered under the policy.

¶41 The Association's approach to constructing these provisions is unsupportable. We agree with Nautilus' position that, reading the definition of "your work" in the synthetic stucco exclusion with the "Damage to Your Work" provision, "not only flouts the manner in which insurance policies are interpreted, but also patently disregards the plain language of the endorsement." In short, the Association asks us to rewrite the synthetic stucco exclusion by including the subcontractor exception from a separate exclusion, which would effectively create coverage that Nautilus did not underwrite and for which the LLC did not pay premiums. The Association ignores the rule that exclusions are analyzed independently of one another, which means that an exception to one exclusion cannot be relied upon to "reinstate coverage where another exclusion has precluded it." ***American Girl, Inc.***, 268 Wis. 2d 16, ¶24.

7. *The Synthetic Stucco Exclusion Modifies the General Liability Coverage Provisions*

¶42 The Association argues that there is a "contextual ambiguity" in the policy as to whether the synthetic stucco exclusion applies to work completed by subcontractors, and therefore, the exclusion should be read as not barring coverage. According to the Association, the exclusion does not specify which specific language of the CGL policy it modifies, and both parties offer a reasonable interpretation of "your work" in the exclusion in the context of the policy as a whole. This argument builds off the Association's faulty argument that the definition of "your work" in the exclusion should be read together with the "Damage to your Work" provision, and thus, it collapses under its own weight.

¶43 Based on the plain language of the synthetic stucco exclusion, a reasonable insured would understand that the exclusion modifies the CGL policy coverage form. Indeed, the exclusion plainly states that "this endorsement changes the policy" and that it "modifies coverage" under the CGL coverage form and products/completed operations. The Association points to no textual clues in other parts of the policy that could support its argument. Simply stated, there is no ambiguity in the exclusion as to what it modifies; the exclusion plainly modifies the general liability coverage part of the policy.

8. *The Synthetic Stucco Exclusion is Not Illusory*

¶44 The Association argues that if the exclusion is interpreted to exclude all the damages claimed in this case, then the policy is illusory. We disagree.

¶45 "Coverage is illusory when an insured cannot foresee any circumstances under which he or she would collect under a particular policy provision." ***Gillund v. Meridian Mut. Ins. Co.***, 2010 WI App 4, ¶19, 323 Wis. 2d 1, 778 N.W.2d 662. According to the Association, it was reasonable for the LLC to expect that damage resulting from masonry work would be covered under the policy, and not excluded, because masonry work was listed as covered in the coverage part of the policy, but this coverage was illusory because synthetic stucco was used on each of the buildings.[2]

¶46 We conclude that the synthetic stucco exclusion does not render the policy illusory. There are reasonably foreseeable circumstances under which

[2] The complaint does not allege that the LLC performed masonry work. However, the parties, in their briefs, agree that the LLC performed masonry work, and therefore, we follow their lead.

coverage would be triggered when the exclusion is interpreted as we interpret it. For instance, as Nautilus points out, coverage would be triggered for claims for defective work, including masonry work, performed on structures that the LLC designed and built that do not include synthetic stucco. The synthetic stucco exclusion would also not apply to work or operations with respect to defects involving work on *internal* components, fixtures, or features, including in structures on which synthetic stucco is applied to the exterior part of the structure.

### 9. *We Decline to Address The Association's Forfeited Argument That There Is an Alleged Exception to the Synthetic Stucco Exclusion*

¶47 The Association points to the last sentence in the synthetic stucco exclusion and argues that it contains an exception for damages caused by work of the LLC as an executive supervisor and executive superintendent. The Association's argument requires interpretation of three sections in the insurance contract, beginning with the last sentence of the exclusion. To repeat, the last sentence of the exclusion states:

> This insurance does not apply to "bodily injury" or "property damage" included in the "products/completed operations hazard" and arising out of "your work" and/or "your product" shown in the Schedule.

The Association argues that this sentence means that the exclusion applies only to property damage that is "*included* in the 'products/completed operations hazard,'" and that a reasonable reading of the "products/completed operations hazard" provisions is that an exception for work as an "executive supervisor" or an "executive superintendent" applies to defeat the synthetic stucco exclusion. (Emphasis added.)

¶48 The problem with the Association's argument is that, as Nautilus points out, the Association raises the issue for the first time on appeal. To be more precise, we reject this argument because it presents a new issue, specifically whether there is an applicable exception to the synthetic stucco exclusion, that the Association failed to pursue in the circuit court. Generally, we do not consider issues raised for the first time on appeal. *See* ***Shadley v. Lloyds of London***, 2009 WI App 165, ¶25, 322 Wis. 2d 189, 776 N.W.2d 838. This rule is one of judicial administration, and we may choose to address an issue raised for the first time on appeal in the exercise of our discretion, depending upon the facts and circumstances of each case. *See* ***Segall v. Hurwitz***, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983) (judicial administration); ***Hopper v. City of Madison***, 79 Wis. 2d 120, 137, 256 N.W.2d 139 (1977) (depending on the facts and circumstances of each case). We decline to consider the issue raised by the Association that an exception to the synthetic stucco exclusion reinstates coverage.

¶49 The Association argues that this is not a new issue but rather a new argument regarding the same issue of whether coverage is precluded by the synthetic stucco exclusion. We disagree because, as we explained, there is a three-step process for determining whether coverage exists under an insurance contract, and the Association completely missed the exception step in the circuit court. Each step requires us to make a separate determination as to whether that step has been satisfied, and thus, each step is a stand-alone issue. For that reason, we decline to accept the Association's invitation to consider blindsiding the circuit court by reversing based on an issue that was never presented to the court. *See* ***Townsend v. Massey***, 2011 WI App 160, ¶25, 338 Wis. 2d 114, 808 N.W.2d 155; *see also* ***State v. Rogers***, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995)

("We will not ... blindside trial courts with reversals based on theories which did not originate in their forum.").

## CONCLUSION

¶50 Based on the foregoing reasons, we conclude that coverage for the LLC is precluded for the claims brought by the Association relating to the construction and maintenance of the buildings owned by members of the Association. Consequently, Nautilus has no duty to defend or indemnify the LLC.

*By the Court.*—Judgment affirmed.

Not recommended for publication in the official reports.