

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 00-7255

September Term, 2002

(96cv02310)

OPAL FREDERICK, AS EXECUTOR OF THE ESTATE OF
JOHN C. FREDERICK, DECEASED, Appellee

FILED ON: NOVEMBER 13, 2002
[713300]

v.

TPG HOSPITALITY, INC., Appellant

AETNA CASUALTY & SURETY CO., Appellee

Appeal from the United States District Court for the District of Columbia

Before: SENTELLE, RANDOLPH, and TATEL, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the briefs filed by the parties. It is

ORDERED AND ADJUDGED that the judgment of the district court be affirmed. The district court correctly concluded that the Aetna policy excludes coverage of TPG's claim. Therefore it also correctly decided not to reach the question whether Aetna was TPG's primary insurance provider.

We need not decide whether the endorsement provision applies only to the Federal Deposit Insurance Corporation and not to TPG, because TPG failed to raise this issue before the district court. *See Nat'l Ass'n of Mfrs. v. Dep't of Labor*, 159 F.3d 597, 605-06 (D.C. Cir. 1998).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41.

PER CURIAM

For the Court:

Mark J. Langer, Clerk