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C A S E A L E R T

New Jersey Supreme Court Rules That Supplemental Collapse Coverage Provision of Insurance Policy Is Unambiguous

In a unanimous decision released last week, the New Jersey Supreme Court in Bardis v. Stinson ruled that the supplemental collapse coverage provision contained in a dwelling policy issued by Cumberland Mutual Fire Insurance Company is unambiguous and does not afford coverage for collapses caused by “hidden” construction defects. The decision was made based on the dissent filed in the Appellate Division opinion.

Methfessel & Werbel attorneys Marc Dembling and Jacqueline Falcone represented Cumberland through all stages of the litigation, ultimately obtaining summary judgment dismissing the plaintiffs’ claims for first party property damages against the carrier. The Supreme Court’s decision reaffirms the principle that courts must enforce the contract as written when the terms of the policy are clear.

Under the Cumberland policy, collapse coverage was extended only where the collapse resulted from one of the causes of loss specifically enumerated under the policy’s supplemental collapse coverage provision, including those caused by “hidden decay” and “use of defective material or methods in construction or repair if the collapse occurs during the construction or repair.” Following the collapse of the basement wall of plaintiffs’ property, plaintiffs filed suit against Cumberland seeking

coverage on the basis that the collapse was due to “hidden decay.”

During the course of discovery, plaintiffs retained an engineering expert who inspected the property and opined that the collapse was caused by improper construction of the basement’s foundation wall combined with loading from soil pressure and the weight of the home’s chimney footing. During his deposition, the plaintiffs’ expert testified that the improperly constructed foundation wall was a “hidden” defect.

The trial court ruled in favor of Cumberland on its motion for summary judgment, noting that both parties’ experts attributed the collapse to defective construction of the foundation wall combined with pressure caused by water, soil or the foundation of the home’s chimney. According to the trial court, because neither parties’ expert attributed the loss to decay, and because the collapse did not occur during the course of construction, there was no coverage available under the policy’s collapse coverage provision.

On appeal, the Appellate Division majority reversed the trial court’s decision and held that the term “decay” is ambiguous and must be construed as encompassing a gradual decline in strength, as argued by the plaintiffs. The majority further held that a

question of fact existed as to whether the wall gradually weakened before collapsing, and therefore whether the collapse was caused by hidden decay.

In a dissenting opinion, the Honorable Paulette Sapp-Peterson, P.J.A.D., agreed with the trial court's finding that the term "decay" cannot be equated with the term "defect," declaring that "[o]ne cannot force a square peg into a round hole." The dissent filed by the Appellate Division permitted Cumberland to appeal as of right to the Supreme Court, where we argued that the Appellate Division minority and the trial court correctly found that the term "decay" is not ambiguous and cannot be equated with construction defects, whether "hidden" or not.

In a 6-0 decision, the New Jersey Supreme Court reversed the judgment of the Appellate Division on the basis of Judge Sapp-Peterson's dissent and reinstated the trial court's ruling granting summary judgment in favor of Cumberland. This decision reaffirms the notion that courts may not adopt a strained construction of policy language in order to support the imposition of liability against the carrier or write for the insured a better policy of insurance than the one purchased.

A copy of the complete decision may be found [here](#). As always, feel free to contact [Marc Dembling](#) or [Jacqueline Falcone](#) of our Coverage Team with any questions about this important decision and its potential applicability to your claims.

SPECIAL REPORT

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