LEDA PUHLOVSKY, Plaintiff-Appellant,

v.

RUTGERS CASUALTY INSURANCE COMPANY, Defendant-Respondent.

No. A-5100-10T1.

Superior Court of New Jersey, Appellate Division.

Argued May 8, 2012.
Decided September 7, 2012.

Jeffrey A. Bronster argued the cause for appellant.

Allison M. Koenke argued the cause for respondent (**Methfessel** & **Werbel**, attorneys; Ms. Koenke, on the brief).

Before Judges Yannotti, Espinosa and Kennedy.

NOT FOR PUBLICATION

PER CURIAM.

Plaintiff Leda Puhlovsky appeals from a January 28, 2011 order of the Law Division granting summary judgment to defendant Rutgers Casualty Insurance Company (Rutgers) and dismissing her complaint for insurance coverage. Plaintiff also appeals from a May 23, 2011 order denying her motion for reconsideration. We reverse and remand for further proceedings.

I

In deciding this appeal, we utilize the same standard, set forth in Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), as the motion judge. Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998). As the Court stated in Brill, "a determination whether there exists a `genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill, supra, 142 N.J. at 540. "If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a `genuine' issue of material fact for purposes of Rule 4:46-2." Ibid. (citation omitted).[1]

We discern the facts from the record, giving plaintiff the benefit of all favorable inferences. Henry v. N.J. Dep't of Human Servs., 204 N.J. 320, 329 (2010). We owe no deference to the motion judge's conclusions on issues of law. Alt. Mut. Ins. Co. v. Hillside Bottling Co., 387 N.J. Super. 224, 231 (App. Div.), certif. denied, 189 N.J. 104 (2006)

A.

The Property and the Claim

Plaintiff owned a four-story building at 69 Market Street in Paterson. Erected prior to 1900, the building had two retail stores on the first floor and a number of residential apartments on the upper three floors. In late March of 2008, a wood frame building at 67 Market Street, which was adjacent to the west side of plaintiff's building, partially collapsed into a schoolyard that was situated to the west of 67 Market Street.

Paterson officials determined that sections of 67 Market Street that remained standing were nonetheless bulging, and ordered demolition of the entire building. The demolition contractor pulled down the remaining sections of that building utilizing a

mechanical excavator with a pincer attachment.

Between March 28, 2008, and April 1, 2008, the demolition contractor was at the site removing debris that had accumulated during the demolition process. The basement at 67 Market Street was also filled with quarry-processed stone in order to "prevent undermining of the foundation" of plaintiff's building.

Plaintiff's building was constructed of brick, and its western brick wall was built into the wood frame of the building at 67 Market Street, creating a common wall between them. Plaintiff's expert has stated that some of the horizontal timber supporting beams on the upper floors of plaintiff's building also extended "through the common wall" into the interior of the building at 67 Market Street, where they were supported "by an interior longitudinal load bearing masonry wall."

On April 1, 2008, John Dalessio, P.E., Paterson's municipal engineer, and Sal Ianelli, the municipality's construction code official, inspected plaintiff's building to determine "if the building is safe to occupy." In a letter to Iannelli the next day, Dalessio stated, in part,

> During the removal of the building at 67 Market Street, it was found that there are unsafe conditions along the common wall between the building at 67 Market Street and the building at 69 Market Street. These conditions render the building unsafe to occupy. At this time the building is in equilibrium and stable. However, a change in condition may cause a collapse. Therefore, the occupants should be directed to vacate the building until such time that the owner can render the building safe to occupy.

Plaintiff apparently notified Rutgers at this time that she would be making a claim under the "Commercial Package Policy" Rutgers had issued for the property on Market Street.

Rutgers retained Andrew Sharick, P.E., to examine the building. In his initial report of April 3, 2008, Sharick stated he had visited the site that day. He opined that "[o]ver the years, the front wall has bowed outward at the center of the building height" and that there was also a "gradual separation between the front and the side walls" on the west side of the building above what had been the roofline of 67 Market Street. He added that after the demolition, the separation had increased by an additional half-inch.

Sharick stated that the building is "sufficiently stable" to permit reopening the street "for a few days until either [the building] is demolished or its front wall is braced...." He also explained that "most of the total movement in the front wall at the front left corner of the building has developed gradually over decades[.]"

In a written report also issued on April 3, 2008, Dalessio advised plaintiff that she had two options: remove or repair the building because "this building is unsafe." He explained that "there has been movement [in the building] over the years" and that,

> The removal of the building at 67 Market Street exposed deficiencies within the building at 69 Market Street. With the removal of the building, some of these deficiencies became unstable.... With this recent movement and change of condition of the left side wall, the building is not safe to occupy.... While it is possible in theory to undertake a repair of this building, the instability of the structure renders it impractical.... [I]t is recommended that the existing building be removed in its entirety and reconstructed according to current building code requirements.

On April 10, 2008, Iannelli issued to plaintiff a "notice of imminent hazard" requiring her to "immediately correct" the hazards and render the building "temporarily safe and secure", or "demolish" the building by April 13, 2008.

Plaintiff elected to demolish the building, given the "high cost of repair." In a second report dated April 20, 2008, Sharick stated his inspection of the site on April 3, 2008, showed "no indication of movement or damage" to plaintiff's building as a result of the demolition of the building at 67 Market Street, and he opined that "there had been no vehicle or equipment impact" to plaintiff's building during the demolition next door. (Emphasis in the original).

Sharick added,

> [T]he presence of the wood frame building at #67 did provide some support to the front wall of #69 where the two buildings joined. When #67 was removed, this support was lost and movement in the front wall of #69 accelerated, making the front wall of #69 unstable and prone to sudden structural failure.

> In conclusion, it is my professional opinion that until March 26, 2008, the building at 67 Market Street had provided support to the left side wall and left front corner of the building at 69 Market. It is my further opinion that the partial structural failure at the left rear of 67 Market did not cause any damage or movement in 69 Market. However, after the partial failure of the building at 67 Market, the removal of the remainder left the building at 69 Market subject to sudden structural failure. Typically a wood frame structure does not support a brick masonry structure, and it is my further opinion that a demolition contractor would not expect that the wood framing of 67 Market, concealed by finished walls, provided support to the adjacent brick bearing wall building. It also is my professional opinion that the work performed by the demolition contractor was not careless or negligent, and the actions involved in executing the demolition work did not damage or weaken the building at 69 Market. The building at 69 Market improperly relied upon the building at 67 Market for necessary support and once that support was gone, the building at 69 Market was structurally unstable. If the building at 67 Market had never failed and was never removed, unchecked gradual outward bowing of the front wall of 69 Market would have continued and led to failure of the front wall of 69 Market at some point in the future.

After receiving Sharick's April reports, Rutgers informed plaintiff by letter dated May 9, 2008, that the building loss was not covered under its insurance policy. Rutgers cited Sharick's report and advised that the "movement/bowing of the front wall has been occurring over a period of many years as a result of earth sinking, rising, or shifting and/or long term settling...." Rutgers added that even if the building next door had not been removed, the "unchecked gradual outward bowing... in the front wall of your building would have continued" leading to "a complete failure in that wall despite the support being given from building #67." Rutgers also stated that plaintiff's building was "improperly constructed" because its brick wall on the western side of the building was constructed into the "wall cavity" of the building at 67 Market Street, and that "due to the enforcement of local law you were obligated to demolish [your] building."

Rutgers denied coverage under the policy's exclusions for losses occasioned by the enforcement of any ordinance or law, or arising from neglect, faulty construction or earth movement. Additionally, Rutgers rejected plaintiff's coverage claim because the "pre-existing damage" to the building did not occur "within the effective period of coverage."

Plaintiff thereafter retained Harold M. Tepper, P.E., to investigate the causes of her building loss. In a report dated June 16, 2010, Tepper opined that plaintiff's building was "habitable" and "stable" prior to the partial collapse and subsequent demolition of the building next door. He concluded,

> The causes of damage to the 69-71 Building that led to its demolition were one or more of the following single incidents that caused the 69-71 Building no longer to be habitable or safe for continuing occupancy, no longer to be suitable for continuing service and to be impractical to repair without affecting the health, safety and welfare of workers and the public:
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> — A lateral "dragging" in westerly direction of the 69-71 Building's common wall by the partial collapse of the 67 Building causing to the 69-71 Building, among others, loosening and loss of brick units, displacement of its west common wall in a southerly direction and widening of existing narrow cracks in the common wall and in the front wall of the 69-71 Building.
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> — A lateral "dragging" in a westerly direction of the 69-71 Building common wall, direct lateral impacts onto the 67 Building side of the common wall and vibrations induced into the common wall by the demolition methods and means utilized in the demolition of the 67 Building that resulted in an exacerbation of the damage noted previously caused during the partial collapse of the 67 Building.
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> — Vibrations induced into the left (west) exterior common wall of 69-71 Building caused by trucks delivering earthen fill materials for the filling of the 67 Building's former basement, movements of heavy mechanized equipment throughout the 67 Building former basement during the filling operation and movements of construction equipment utilized in the compaction of the earthen fill materials dumped into the 67 Building former basement all of which resulted in an exacerbation of the damage noted previously caused during the collapse of the 67 Building and its subsequent demolition.

Sharick thereafter issued a responding report in which he disagreed with each of Tepper's conclusions.

B.

The Policy

Rutgers had issued a "Commercial Package Policy" to plaintiff for the period November 15, 2007, to November 15, 2008. The policy limit for the building was $600,000 and the policy stated Rutgers "will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss." The term "Covered Property" included the building at 69 Market Street.

In a separate section entitled "Causes of Loss — Special Form", the policy stated "Covered Causes of Loss means Risks of Direct Physical Loss unless the loss is: 1. Excluded in Section B., Exclusions; or 2. Limited in Section C., limitations; that follow." The following "Section B. Exclusions" is divided into four subsections of exclusions identified numerically.

Subsection (B)(1) states:

> We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

This subsection then lists eight causes of loss, identified as (a) to (h). For purposes of this appeal, we set forth only those excluded causes of loss raised by Rutgers and addressed by the motion judge. Accordingly, we examine portions of subsections (B)(1)(a) and (b).[2]

Subsection (B)(1)(a) is titled "Ordinance or Law" and states, in pertinent part:

> The enforcement of any ordinance or law... [r]egulating the construction, use or repair of any property; or [r]equiring the tearing down of any property, including the cost of removing its debris.

This exclusion applies "even if the property has not been damaged." Subsection (B)(1)(b) is titled "Earth Movement" states, in pertinent part:

> Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of the foundations or other parts of realty.

The term "soil conditions" is defined to include contracting, expansion, freezing or thawing, among other things.

Subsection (B)(2) states "[w]e will not pay for loss or damage caused by or resulting from any of the following" and then lists thirteen causes of loss, identified as (a) to (m). Again, for purposes of this appeal, we set forth only those excluded causes of loss raised by Rutgers and addressed by the motion judge. This would include subsection (B)(2)(d)(4) which excludes loss or damage caused by or resulting from "[s]ettling, cracking, shrinking or expansion."

Finally, subsection (B)(3) provides "[w]e will not pay for loss or damage caused by or resulting from any of the following, 3.a. through 3.c." However, if any excluded loss listed in this subsection "results in a covered Cause of Loss, [Rutgers] will pay for the loss or damage caused by that Covered Cause of Loss." Again, for the purpose of this appeal, we address subsection (B)(3)(c)(2) which conditionally excludes loss or damage caused by or resulting from, among other things, "workmanship, repair, [and] construction", and (B)(3)(c)(4) which excludes losses from "faulty, inadequate or defective... [m]aintenance of part or all of any property on or off the described premises."

We note that there are significant differences among these exclusions. Those exclusions in subsection (B)(1) absolutely exclude coverage "regardless of any other cause or event that contributes concurrently or in any sequence to the loss;" those exclusions in subsection (B)(2) are not subject to the "regardless of any other cause or event" language; and those exclusions in subsection (B)(3) that "result[]" in a "Covered Cause of Loss" will not preclude payment for loss or damage "caused by that Covered Cause of Loss."

C.

The Litigation

Plaintiff filed a declaratory judgment action seeking coverage and, following the completion of discovery, Rutgers moved for summary judgment. The motion judge determined initially that plaintiff's claims were not covered because of the exclusion in the policy entitled "Ordinance or Law". The judge explained:

> [T]he court cannot find that there are any genuine issues of material fact sufficient to warrant the denial of Rutgers' motion. The language of the policy is not ambiguous where it excludes claims for damage caused by Ordinances or Laws as well as earth movements regardless of any other cause, such as the collapse of an adjacent building.

The judge added:

> Further, the Court does not find that the collapse of the adjacent 67 Market St. building caused the eventual demolition of the subject property at 69 Market St. Even if the Court assumed that this assertion was true, i.e. 67's collapse caused 69's demolition, the unambiguous language of the policy still prohibits the insured's claim of damages under the policy wherein the policy refers to "regardless of any other cause" since the plaintiff's building was demolished at the direction of the City of Paterson.

The judge concluded there was no coverage under the plain language of the policy.

The judge then entered summary judgment dismissing plaintiff's complaint against Rutgers and declared that plaintiff's "claim for building loss under the policy of insurance issued by Rutgers... was properly denied because there is no coverage for this loss under the policy." The judge later denied a motion for reconsideration and added that plaintiff's loss is not only excluded by the previously referenced exclusions, but also by the "poor workmanship" exclusion. This appeal followed.

II

Plaintiff contends that the motion judge erred in his construction of the Rutgers policy and his application of the policy to the "somewhat peculiar facts of this case." Plaintiff argues that the motion judge failed to appreciate that Rutgers had the burden of showing exclusions applied and "mistakenly assumed" an obligation to "comb the policy for language that could defeat coverage."

We begin by stating some general principles that govern the interpretation of an insurance contract. An insurance policy is "interpreted according to its plain and ordinary meaning." Voorhees v. Preferred Mut. Ins. Co., 128 N.J. 165, 175 (1992). The policy language "`underscores the basic notion that the premium paid by the insured does not buy coverage for all... damage but only for that type of damage provided for in the policy.'" Hardy v. Abdul-Matin, 198 N.J. 95, 102 (2009) (quoting Weedo v. Stone-E-Brick, Inc., 81 N.J. 233, 237 (1979)). "[E]xclusions are presumptively valid and will be given effect if `specific, plain, clear, prominent, and not contrary to public policy.'" Princeton Ins. Co. v. Chunmuang, 151 N.J. 80, 95 (1997) (citations omitted).

However, as a general rule, "insurance policy exclusions must be narrowly construed; the burden is on the insurer to bring the case within the exclusion." Ibid. If the policy language is clear, we must interpret the policy as written and refrain from "writing a better insurance policy than the one purchased." Hardy, supra, 198 N.J. at 101-102 (quoting Zacarias v. Allstate Ins. Co., 168 N.J. 590, 595 (2001)); Villa v. Short, 195 N.J. 15, 23 (2008); President v. Jenkins, 180 N.J. 550, 562 (2004).

If the policy language is sufficiently ambiguous to support two meanings, one that favors the insurer and one that favors the insured, the policy should be construed to provide coverage, id. at 563, and to "comport with the reasonable expectations of the insured." Zacarias, supra, 168 N.J. at 595; see also Sealed Air Corp. v. Royal Indem. Co., 404 N.J. Super. 363, 375 (App. Div.), certif. denied, 196 N.J. 601 (2008); Search EDP, Inc. v. Home Assurance. Co., 267 N.J. Super. 537, 542 (App. Div. 1993), certif. denied, 135 N.J. 466 (1994).

With these principles guiding our analysis, we first determine that the Rutgers policy is an "all-risk" policy of insurance, rather than a policy that insures against losses arising from specifically identified causes.[3] The Rutgers policy itself defines "covered causes of loss" to include "risks of direct physical loss" to the covered property, unless the loss is "excluded" or "limited" by the express terms of the policy. In Victory Peach Group, Inc. v. Greater N.Y. Mut. Ins. Co., 310 N.J. Super. 82, 87 (App. Div. 1998),

we explained,

> An "all-risk" policy creates a "special type of insurance extending to risks not usually contemplated, and recovery under the policy will generally be allowed, at least for all losses of a fortuitous nature, in the absence of fraud or other intentional misconduct of the insured, unless the policy contains a specific provision expressly excluding the loss from coverage." 43 Am.Jur.2d Insurance § 505 (1982).
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> [footnotes omitted.]

Accord: Ariston Airline & Catering Supply Co., Inc. v. Forbes, 211 N.J. Super. 472 (Law Div. 1986). We have defined a "fortuitous loss" as "one that, so far as the parties to the insurance contract are aware, is dependent on chance." Victory Peach, 310 N.J. Super. at 87 (citing 5 Appleman, Insurance Law and Practice, § 3092 (Supp. 1996-97).

Granting plaintiff the benefit of all favorable inferences, we have little trouble concluding that damage and loss to plaintiff's building, caused either by the work of contractors performing demolition next door or by the physical collapse of sections of the neighboring building that exerted a lateral "dragging" on the load-bearing side wall of plaintiff's building, would be a "covered cause of loss" under the "all-risk" Rutgers policy, unless specifically excluded from coverage. Such a fortuitous catastrophic occurrence is precisely the type of "direct physical loss" that falls within the broad coverages available under an "all-risk" policy. See Ariston Airline & Catering Supply Co., Inc., supra, 211 N.J. Super. at 481. We thus turn to the exclusions section of the Rutgers policy to ascertain if the damage resulting from this otherwise "covered cause of loss" is excluded.

As noted earlier, the motion judge predicated his ruling upon a determination that plaintiff's loss was excluded under the "ordinance or law" exclusion. He determined that "plaintiff's building was demolished at the direction of the City of Paterson." We disagree.

First, the City of Paterson did not require the demolition of plaintiff's building. Rather, the City gave plaintiff the choice either to demolish the structure or "immediately correct" the hazards and render the building "temporarily safe and secure." The exclusion in the Rutgers policy refers to code enforcement "[r]equiring the tearing down of any property", which is not what happened here. Further, it is incorrect to suggest that the plaintiff's alternative choice to "immediately correct" the hazard is excluded by code enforcement orders "[r]egulating the construction, use or repair of any property."

That section has been construed to apply to the increased expenses incurred by an insured in repairing or rebuilding a damaged structure so as to bring it into compliance with a local code or ordinance. See, e.g., Prytania Park Hotel v. General Star Indem. Co., 966 F. Supp. 618 (E.D. La. 1995); Spears v. Shelter Mutual Ins. Co., 2003 Ok. 66, 73 P.3d 865 (Sup. Ct. 2003); see generally, 1-4 Insuring Real Property § 4.05, para. 4(c) (Matthew Bender & Co. 2012). In our view, that is the only fair construction of this particular subsection.

Second, we have heretofore construed the "ordinance or law" exclusion to apply far more narrowly than the motion judge in the case before us. In Danzeisen v. Selective Ins. Co. of Am., 298 N.J. Super. 383 (App. Div. 1997), plaintiff sustained a fire loss to her building, a non-conforming structure, and the code official determined that because the destruction was greater than fifty percent of its assessed valuation, the structure must be demolished. Defendant's policy contained the same exclusion at issue here, and we held it did not bar plaintiff's claim. We explained:

> The exclusion with which we are confronted applies generally to losses resulting from governmental orders to destroy, as where a structure has become unsafe by reason of deterioration or other non-catastrophic causes. If, in the face of the general rule, defendant had sought to exclude responsibility for enhanced losses occasioned by a governmental requirement to raze the balance of property substantially destroyed by a catastrophic occurrence, it could have stated the exclusion with far greater clarity than it did in the policy at issue. We hold, therefore, in accordance with the general rule, that plaintiff was entitled to be compensated for a total loss of the property so destroyed. We remand for a determination of the actual cash value of the property as of the time of the fire, when the loss occurred.
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> [298 N.J. Super. at 389.]

Cf. Throgs Neck Bagels Inc. v. GA Ins. Co. of New York, 241 A.D. 2d 66, 70, 671 N.Y.S. 2d 66, 70 (1st Dep't 1998) (declining to apply exclusion because the "actual cause of the loss" was a fire which rendered the structure unsound, and the code official's order served "merely as a confirmation of the circumstances regarding the actual loss[.]")

Further, the motion judge's reliance on the "earth movement" exclusion was not warranted in the context of a motion for summary judgment. Whether or not the settling, cracking or other disarrangement of plaintiff's building occurred as a consequence of "earth movement" is a question of fact for trial. Tepper, plaintiff's expert, opined that the damage to plaintiff's property occurred as a consequence of the partial collapse of the structure at 67 Market Street and the activities of the demolition contractors there. Accordingly, if the fact-finder determines the expert's opinion to be credible, it may likewise find that plaintiff suffered a loss not caused by earth movement.

Also, a substantial question exists as to the breadth of this exclusion. See Ariston, supra, 211 N.J. Super. at 485, wherein the court stated:

> It would be within the expectation of the parties that cracks in a building, as well as shrinking and bulging, when caused, for example, by normal settling or by expansion and contraction resulting from changes in temperature, would not be covered. Certainly, it was not their expectation or intention that cracking or bulging resulting from some unusual event, such as a vehicular collision, would be excluded. "Cracking," furthermore, is a result, not a cause. Were the policy to be read broadly in favor of the company, contrary to the proper rule, any minor initial cracking which later became so widespread as to destroy a building would provide a reason for denying coverage. The policy language cannot be so read.

Thus, the court must determine whether the policy provides coverage, if the fact-finder determines that the building suffered damage due to the movement of the earth. Again, however, a fact-finder must first resolve the factual dispute pertaining to the disputed loss.

Turning to the exclusions set forth in subsections (B)(2) and (3) of the Rutgers policy, we conclude that their applicability to plaintiff's claim for coverage likewise cannot be properly determined on a motion for summary judgment, given the record before us. Their application will depend upon a factual determination as to the cause or causes of plaintiff's loss and the precise nature of the loss itself. Also, we again observe that the "regardless of any other cause or event" language does not modify or pertain to these exclusions. Accordingly, if the "efficient or predominant cause" of plaintiff's loss is a covered peril, then the fact that an excluded peril may have also contributed to the loss, does not vitiate coverage.

Normally, "when an insurance policy uses an exclusion which bars coverage for losses caused by a particular peril, the exclusion applies only if the excluded peril was the `efficient proximate cause' of the loss." Zurich Am. Ins. Co. v. Keating Bldg. Corp., 513 F. Supp. 2d 55, 70 (D.N.J. 2007) (quoting Auto Lenders Acceptance Corp. v. Gentilini Ford, Inc., 181 N.J. 245, 257 (2004)). Thus, an insured is normally afforded coverage where an "included cause of loss is either the first or last step in the chain of causation which leads to the loss." Assurance Co. of Am., Inc. v. Jay-Mar, Inc., 38 F. Supp. 2d 349, 353 (D.N.J. 1999) (citing Franklin Packaging Co. v. Cal. Union Ins. Co., 171 N.J. Super. 188, 191 (App. Div. 1979) (where vandals broke into insured's warehouse and caused flood, resulting in damage to inventory, court held that vandalism, a covered cause of loss, was proximate cause even though water damage was excluded under the policy), certif. denied, 84 N.J. 434 (1980); Stone v. Royal Ins. Co., 211 N.J. Super. 246, 251 (App. Div. 1986) (where sump pump hose broke and flooded insured's basement, court held broken household appliance, a covered cause of loss, was proximate cause even though losses caused by subsurface water were excluded under the policy)).

Accordingly, when considering the exclusions within subsections (B)(2) and (3), the fact-finder may determine that while an exclusion applies, the efficient proximate cause of the loss was nonetheless a "covered cause of loss." In that case, coverage applies. Again, however, this determination cannot be resolved in the context of a motion for summary judgment.

We reverse the grant of summary judgment in favor of Rutgers and we remand this matter to the Law Division for further proceedings consistent with this opinion. We do not retain jurisdiction.

[1] Neither party has provided a statement of "all items submitted to the court on the summary judgment motion" as required by R. 2:6-1(a) and R. 2:6-3. We therefore base our decision on the record before us.

[2] The Commercial Package Policy issued by Rutgers is an eighty-page document containing scores of provisions granting, limiting and excluding various coverages and governing the payment of claims. We have limited our review to the sections of the policy deemed relevant by the parties. We express no view as to whether any other provision of the policy would require or exclude coverage. See Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234-235 (1973) ("It is a well-settled principle that our appellate courts will decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available `unless the questions so raised on appeal go to the jurisdiction of the trial court or concern matters of great public interest.'" Reynolds Offset Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959), certif. den. 31 N.J. 554

(1960)).

[3] The latter type of policy is often identified as a "named peril" policy of insurance. 1-1 Appleman, Insurance Law and Practice, § 1-06 (2012).