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## Policy Exclusion for “Pressure or Weight of Water”

Recently, the Appellate Division, Fourth Department, considered an appeal of an action involving damage to an insured’s in-ground swimming pool under a homeowner’s insurance policy. *Gravino vs. Allstate Insurance Company*, May 7, 2010. Five days after the plaintiff had drained his pool for painting, he noticed that one end of the pool lifted out of the ground and damaged the concrete around the pool. Plaintiff submitted a claim to Allstate Insurance Company which denied coverage based on, among other things, an exclusion for damage caused by “pressure or weight of water”.

Supreme Court granted plaintiff’s cross-motion for partial summary judgment, declaring that the policy covered the damage to the swimming pool. On appeal, the Appellate Division, Fourth Department, reversed and granted the defendant’s motion for summary judgment, dismissing the complaint.

The Appellate Court noted that the experts for both parties found that hydrostatic pressure in the soil surrounding the pool caused the pool to lift from the ground. In response to plaintiff’s expert’s opinion that the damage would not have occurred if plaintiff had not emptied the pool, the Court ruled that that was not determinative of the issue of coverage.

The policy expressly provides that, where the damage has two or more causes, the loss is not covered if the ‘predominant cause(s) of loss is (are) excluded\*\*\* [t]o determine causation, [we must] look [ ] to the ‘efficient or dominant cause of the loss’ not the event ‘that merely set the stage for that later event’\*\*\*. Here, although the drainage of the pool may have been a pre-condition to the lifting of the pool from the ground, we conclude that defendant established as a matter of law that the ground water pressure was the ‘predominant cause’ of the loss, thus rendering applicable the policy exclusion for damages caused by ‘pressure or weight of water’.

This decision is an example of the Court’s enforcement of the policy exclusion where there are two or more alleged causes of a loss, and one is the “efficient or dominant” cause of the loss. ■

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