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Water Damage Exclusion Upheld in Swimming Pool Damage Claim

The Appellate Division, First Department, recently considered the application of exclusions for water damage and earth movement to a property damage claim by an insured under a homeowner's policy for damage to a swimming pool.

In *Jahier vs. Liberty Mutual Group*, decided on July 21, 2009, defendants, Liberty Mutual Group and The First Liberty Insurance Corporation (Liberty) issued a deluxe homeowner's insurance policy to the plaintiffs insuring their residence and other structures on their property. In April, 2007, the plaintiffs' in-ground swimming pool, surrounding patio area and plumbing servicing the pool, sustained damage when the pool lifted up several inches out of the ground. At that time, the pool was not filled with water, and had been drained by a contractor to perform maintenance. While the pool was empty, heavy rains fell in the area. As a result, plaintiffs made claim under their homeowner's policy. Liberty disclaimed coverage based upon clauses in the policy which excluded losses due to "earth movement" and "water damage."

Plaintiffs commenced suit. The lower court denied Liberty's motion for summary judgment based upon the exclusionary provisions of the policy. On appeal, the First Department reversed.

The Court noted that where an insurer denies coverage based upon an exclusion, the "burden is on the insurer to demonstrate that the exclusion applies in the particular case, and that it is 'subject to no other reasonable interpretation.'" The Court found that Liberty "met its initial burden of establishing its entitlement to judgment as a matter of law, by demonstrating that the 'water damage' exclusion clearly and unambiguously applied to the plaintiffs' loss. The plain language of the exclusion relieves Liberty from loss caused 'directly or indirectly' by '[w]ater damage, meaning...[w]ater below the surface of the ground, including water which exerts pressure on...a building...swimming pool or other structure.' Furthermore, losses due to 'water damage' are excluded 'regardless of any other cause or event contributing concurrently or in any sequence to the loss.' Here, the evidence demonstrated that the plaintiffs' loss was attributable to the sub-surface water pressure that was exerted upon the empty swimming pool, even though it was precipitated by the drainage of the pool and heavy rainfall***."

The decision appears to be a proper application of the water damage exclusion under the homeowner's policy, and demonstrates the Court's willingness to apply the plain meaning of policy language in favor of an insurer. ■

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