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New Jersey Appellate Division Affirms Pro-Policyholder Insurance Rules

By Robert D. Chesler and Nicholas M. Insua

Sosa v. Massachusetts Bay Insurance Co., No. A-5349-16T3 (App. Div. April 24, 2019) is an important statement of New Jersey insurance law, not so much for its pro-policyholder holding, but for how it reached its conclusion. In recent years, New Jersey decisions on insurance law have been mixed from the policyholder's standpoint. *Sosa* is an important reaffirmation of the fundamental pro-policyholder rules of New Jersey insurance law construction. Insurance companies often say an insurance policy is just a contract. That's true, but it's a special kind of contract in that pro-policyholder rules are applied by courts. Application of those rules is critical to any policyholder seeking coverage.

Sosa concerned a water main break that resulted in the flooding of the homeowner's driveway, garage and basement. The insurance company relied on water exclusions to deny coverage. The trial court agreed with the insurance company and dismissed the case on summary judgment. The New Jersey Appellate Division reversed.

One basis for the insurance company's denial was a surface water exclusion. The court looked to definitions of surface water in a statute (favorable to the policyholder) and in the case law (favorable to the insurance company), and held that when two plausible meanings of a policy term existed, the policy term was ambiguous, and "the ambiguity must be resolved against the insurer." The court therefore held that the exclusion did not apply.

The insurance company also argued that a sump endorsement applied because it contained broad language stating that the water exclusions applied if caused by "an act of nature or is otherwise caused." The court dismissed this argument in ringing terms:

> As a threshold matter, we question whether the insurer may invoke a general amendment to the water damage exclusion that is buried in an endorsement that, by its title, leads the reader to believe it pertains only to "Water Back-up and Sump Discharge or Overflow," and which in fact primarily pertain to that subject. Insurers are not free to subject policyholders to "hidden pitfalls" that violate the insured's reasonable expectation. *See Kievit v. Loyal Protective Life Ins. Co.*, 34 N.J. 475, 482 (1961).

ANDERSON KILL
1251 Avenue of the Americas
New York, NY 10020
(212) 278-1000

ANDERSON KILL
1600 Market Street, Suite 2500
Philadelphia, PA 19103
(267) 216-2700

ANDERSON KILL
1055 Washington Boulevard, Suite 510
Stamford, CT 06901
(203) 388-7950

ANDERSON KILL
1717 Pennsylvania Avenue, Suite 200
Washington, DC 20006
(202) 416-6500

ANDERSON KILL
One Gateway Center, Suite 1510
Newark, NJ 07102
(973) 642-5858

ANDERSON KILL
Wells Fargo Building
355 South Grand Avenue
Los Angeles, CA 90071
(213) 943-1444

www.andersonkill.com

who's who

Robert D. Chesler is a shareholder in Anderson Kill's New Jersey office and is a member of the firm's Cyber Insurance Recovery Group. Bob represents policyholders in a broad variety of coverage claims against their insurers and advises companies with respect to their insurance programs.

rchesler@andersonkill.com
(973) 642-5864

Nicholas M. Insua is a shareholder in the New Jersey office of Anderson Kill who focuses his practice on insurance recovery litigation and counseling. Nick also represents clients in business disputes outside the insurance coverage context.

ninsua@andersonkill.com
(973) 642-5863

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The court continued to state that courts should prevent overreaching by insurance companies, exclusionary clauses must be "conspicuous, plain and clear," and courts will not apply "hidden policy language that departs from reasonable expectations created by a declarations page."

The insurance company further argued that the term "surface water" had a particularly broad meaning. However, the term was not defined in the policy. The court found that "particularly absent a definition in the policy, we reject the insurer's broad interpretation of the term." Also, the insurance company sought to apply the term "water" broadly, and once again the court rejected this construction: "Had the insurance company intended so broad an exclusion, it could have said so."

Why is the *Sosa* decision important? Because applying these rules is the way in which policyholders gain coverage. Every coverage brief should commence by reciting these rules. Policyholders must be creative in construing policy terms in the context of the facts of their case. Ambiguity, reasonable expectations, and the narrow construction of exclusions are fundamental to the successful prosecution of an insurance claim.

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