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Insurers in New Jersey Secure a Victory on Water Damage Claims, But How Big a Victory Likely Remains to be Seen

BY:

Property insurance policies commonly cover water damage caused by an accidental discharge or leakage of water from an on-site plumbing system and commonly exclude water damage caused by a sewer backup. So it's not surprising that the cause of water damage is a common battleground between policyholders and insurers. In *Salil v. Ohio Security Insurance Co.*, 2018 WL 6272930 (N.J. App. Div. Dec. 3, 2018), insurers scored a victory when the court held that the release of water and sewage into a restaurant was subject to a \$25,000 sublimit for water damage caused by a sewer backup. But claims adjusters and policyholders confronted with water damage claims in New Jersey will no doubt continue to do battle over whether the *Salil* decision was a decisive victory for insurers or a limited one.

In *Salil*, the insured landlord leased its building to a restaurant operator. After the insured's tenant reported water and odor at the restaurant, the insured contacted a plumber, who informed the insured that a clog in the restaurant's toilet caused Category 3 water to flow into the restaurant. The insured allegedly sustained approximately \$160,000 in restoration costs and loss of business income. The plumber used a snake to clear the sewer line to remedy the issue. The restoration company confirmed the cause of the loss was a sewer back up. On this basis, the insurer determined that the cause of loss was a sewer backup. The policy excluded coverage for water damage caused by a sewer back-up, but an endorsement restored that coverage, subject to a \$25,000 sub-limit for "direct physical loss or damaged caused by water... which backs up into a building or structure through sewers or drains which are directly connected to a sanitary sewer or septic system." Pursuant to this endorsement, the insurer paid its \$25,000 sublimit.

The insured sued seeking its full damages "because the damage resulted from an accidental discharge of water from a blockage in the plumbing system within the property, rather than a sewer back-up originating outside the property...." The trial court rejected this argument, stating that the insured could only seek coverage for the accidental discharge of water from the toilet if it was caused by a sewer back up. On appeal, the insured argued that the trial court misinterpreted the policy language and mischaracterized the loss as a sewer backup. The Appellate Division held that there were no disputed issues of fact, which presumably included the cause of the loss. And the court also rejected both of the insured's arguments. The court held that the water damage endorsement was unambiguous and applied, and also rejected the insured's attempt to distinguish a "sewer back-up from an accidental discharge of water."

The *Salil* court's holding is a victory for insurers facing water damage claims caused by backflow. But before this victory can be deemed decisive, it likely will need to be subjected to further litigation.