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Federal District Court Addresses Anti-concurrent Cause Language in Property Policy

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In *Surchi1, LLC v. Travelers Indem. Co*., 2024 U.S. Dist. LEXIS 227796 (N.D. Ill. Dec. 17, 2024), the United States District Court for the Northern District of Illinois addressed a carrier's obligation to cover costs associated with remediating water-related damage to insured property. In July 2022, the insured property experienced water-related damage and resulting repair costs. A claim was submitted for coverage under a property policy issued by Travelers. Travelers denied the claim and the insured initiated an action against Travelers seeking coverage. During the litigation Travelers maintained its position that it was not obligated to cover the water-related damage, because (1) under the policy, Travelers is not obligated to cover damage caused by surface water, even if surface water contributed only in part to the damage, and (2) the pleadings irrefutably establish that surface water contributed, at least in part, to the property damage. The insured took the contrary view arguing that Travelers was obligated to cover water-related damage (1) because the damage was the result of a water or sewage backing up or overflowing from sewers, and (2) this obligation remains, even if surface water contributed in part to the damage.

The court began with a review of the relevant policy language. Under the policy, Travelers "will not pay for loss or damage caused directly or indirectly by ... surface water." At the same time, under a change endorsement to the policy, Travelers agreed to cover "direct physical loss of or damage to Covered Property at the described premises caused by or resulting from water or sewage that backs up or overflows from a sewer, drain, or sump." In light of this language, the parties dispute centered on whether Travelers is obligated to cover damages caused concurrently by surface water (an excluded peril) and by water or sewage that backs up or overflows from a sewer, drain, or sump (a covered peril).

The Travelers policy included "anti-concurrent cause" prefatory language to the surface water exclusion which provided that "loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss". Based on this language, Travelers asserted that because the damage in question was concurrently caused by both a covered and an excluded cause, there was no coverage afforded for the claim. The insured disagreed and argued that the anti-concurrent causation clause was abrogated by the change endorsement that obligated Travelers to cover damages resulting from water or sewage that backs up or overflows from a sewer, drain, or sump. Specifically, the insured argued that the endorsement not only replaced the language contained in the policy relating to coverage for 'water or sewage backup and sump overflow, but also served to eliminate any limitation on that coverage (including the prefatory anti-concurrent causation clause).

The court disagreed with the insured and held that under the plain language of the endorsement, only the portion of the policy that, left unaltered, would preclude coverage of damage caused by "water or sewage that backs up or overflows from a sewer, drain or sump" was affected by the change endorsement. The court noted that the change endorsement says nothing about abrogating the anti-concurrent causation clause. Finally, the court dismissed the insured's attempts to paint the endorsement as ambiguous because it failed to include an explicit statement on the ongoing viability of the anti-concurrent causation clause. Per the court, given the limited nature of the endorsement, the insured cannot credibly maintain that the endorsement modified all aspects of the policy relating to coverage for water or sewage backup—including the anti-concurrent causation clause.

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