

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

SYLVANIA GARDENS APARTMENTS, and : AUGUST TERM, 2000
SC MAIN STREET

Plaintiffs : No. 0734

v. :

LEGION INSURANCE CO., :

Defendant

: Control No. 111525

O R D E R

AND NOW, this 14th day of February 2001, upon consideration of the Cross Motions for Summary Judgment and the respective responses, all other matters of record and in accord with the Opinion being filed contemporaneously with this Order, it is hereby **ORDERED** that:

1. The defendant's Motion is **Denied**; and
2. The plaintiffs' Motion is **Granted, in part, and Denied, in part**;
3. For the purposes of Legion Insurance Co. Policy No. CF3-0046696-99, any structure situated in Zone AE will be deemed **not** situated in flood zone "A" or "V"; and
4. The applicable deductible under Legion Insurance Co. Policy No. CF3-0046696-99 for any structure situated in Zone AE shall be \$25,000.00.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.

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O P I N I O N

Albert W. Sheppard, Jr., J. February 14, 2001

Plaintiffs, Sylvania Gardens Apartments (“Sylvania”) and S.C. Main Street (“S.C.”), and defendant, Legion Insurance Company (“Legion”), have filed cross Motions for Summary Judgment (“Motions”) based on a dispute arising from Legion Insurance Policy No. CF3-0046696-99 (“Policy”).

For the reasons set forth, this court **Grants** plaintiffs’ Motion, **in part**, and **Denies** Legion’s Motion.

BACKGROUND

Plaintiffs are the owners of property located at 3901 Main Street, Philadelphia, Pennsylvania (“Property”). Plaintiffs’ Motion at ¶ 3; Legion’s Motion Exhibit 3.¹ The Property is located in Flood Zone AE. Plaintiffs’ Motion at ¶ 5.² Furthermore, according to the Federal Emergency Management Agency (“FEMA”), the Property is located in both Zone AE and a “Special Flood Hazard Area,” defined as a zone beginning with either “A” or “V.” Legion’s Motion at ¶ 7, Legion’s Motion Exhibit 3.

The Policy was issued by Legion.³ Plaintiffs’ Motion at ¶ 1. The deductible under the Policy for flood loss generally is \$25,000.00. Plaintiffs’ Motion at ¶ 6. However, for “any structure . . . situated in flood zone “A” or “V”, the flood deductible shall be the maximum limit available under the National Flood Insurance Program, whether purchased or not.” Legion’s Motion at ¶ 2.⁴ The maximum amount of coverage available for the Property under the National Flood Insurance Program is \$500,000.00. Legion’s Motion at ¶¶ 7, 9.

On September 16, 1999, the Property was damaged by flood. Plaintiffs’ Motion at ¶ 3. The plaintiffs allege that the resulting damage (“Damage”) amounted to \$255,088.00. Legion’s

¹ Legion does not challenge the assertion that the Plaintiffs own the Property “[f]or the purposes of this motion.” Legion’s Answer at ¶ 5.

² Plaintiffs’ Motion Exhibit D, which shows zones A, AE, AH, AO, A99, V, VE, X and D, supports this conclusion.

³ The Plaintiffs assert that the Policy was issued to both Sylvania and S.C. Plaintiffs’ Motion at ¶ 1. However, Legion denies that S.C. is insured under the Policy. Legion’s Answer at ¶ 1.

⁴The provision that includes this language is referred to as the “Provision.”

Motion at ¶ 4. Based on the foregoing, the plaintiffs' seek a declaratory judgment ordering Legion to cover the Damage in excess of \$25,000.00 and punitive damages for Legion's supposed bad faith. Legion seeks to have the applicable deductible be the maximum coverage available, which, since that amount exceeds the alleged damages, would result in no liability for Legion.

DISCUSSION

Pennsylvania Rule of Civil Procedure 1035.2 allows a court to enter summary judgment “whenever there is no genuine issue of any material fact as to a necessary element of the cause of action.” A court must grant a motion for summary judgment when a nonmoving party fails to “adduce sufficient evidence on an issue essential to his case and on which he bears the burden of proof such that a jury could return a verdict in his favor.” Ertel v. Patriot-News Co., 544 Pa. 93, 101-02, 674 A.2d 1038, 1042 (1996).

I. Interpretation of the Policy

Interpretation of an insurance policy is a matter of law to be decided by the court. Curbee, Ltd. v. Rhubart, 406 Pa. Super. 505, 509, 594 A.2d 733, 735 (1992). A specific provision in an insurance policy is deemed ambiguous “if reasonably intelligent people could differ as to its meaning.” Williams v. Nationwide Mut. Ins. Co., 750 A.2d 881, 885 (Pa.Super.Ct. 2000).

Essentially, the dispute presented is whether the Property is located in Flood Zone A. FEMA has developed a classification system under which properties in flood zones are placed in one of a number of categories. Among those categories is Zone A, defined as an “[a]rea of special flood hazard without water surface elevations determined.” 44 C.F.R. § 64.3(a)(1) (emphasis added) (“Section 64.3(a)(1)”). Zone A is distinguished in this section from Zone AE, which is classified as an

“[a]rea of special flood hazard with water surface elevations determined.” Id. (emphasis added).

44 C.F.R. § 59.1 (“Section 59.1”), however, includes slightly different definitions of these terms. There, Zone A is said to be an “area[] of special flood hazard” that “usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/1-30, AR/AE, AR/AO, AR/AH, AR/A, V/O, V/1-30, VE, or V.” Thus, the Section 59.1 definition of Zone A is significantly broader than that set forth in Section 64.3(a)(1).⁵

This court submits that these conflicting definitions of Zone A create an ambiguity in the Policy. On the one hand, under Section 59.1, Zone AE is a subset of Zone A, an application that would make the National Flood Insurance Program deductible apply to Zone AE structures. In contrast, Section 64.3(a)(1) makes a distinction between Zone A and Zone AE, a distinction that is reflected in Plaintiffs’ Motion Exhibit D. This would make the \$25,000.00 deductible applicable in Zone AE. This court believes that reasonably intelligent people could differ as to the Provision’s meaning. Thus, the Policy is ambiguous.

This rationale is supported by Hartford Fire Insurance Company v. WSR Corp., No. CIV.A. 99-6120, 2000 WL 974328 (E.D. Pa. July 14, 2000). There, the court considered an insurance provision that excluded coverage for “all locations designated in Flood Zone A or Flood Zone B.” 2000 WL 974328, at *1 (capitalization and emphasis removed). After reviewing the

⁵ Under Section 59.1, both Zone A and Zone AE paradoxically can be considered subzones of Zone A. Thus, Section 59.1 includes two possible definitions of “Zone A”: “Superzone A,” which is composed of Zone AE and other subzones, and “Subzone A,” which, along with Zone AE, Zone V and others, is encompassed within Superzone A. The usage in Section 64.3(a)(1) comports with the definition of Subzone A.

insurance policy and the relevant federal regulations, the court concluded that the term “Flood Zone A” was ambiguous, as both parties’ interpretations were reasonable.

Where a court finds an insurance policy provision ambiguous, “the provision is to be construed in favor of the insured and against the insurer.” Redevelopment Auth. of Cambria Cty. v. International Ins. Co., 454 Pa. Super. 374, 388, 685 A.2d 581, 588 (1996). See also Bubis v. Prudential Prop. & Cas. Ins. Co., 718 A.2d 1270, 1273 (Pa.Super.Ct. 1998) (“an ambiguity in an insurance contract should be read in favor of the insured”). This can be attributed to the general principle that a contract must be construed against the drafter, as well as the fact that insurance contracts generally are contracts of adhesion. Zak v. Prudential Prop. & Cas. Ins. Co., 713A.2d 681, 684 (Pa.Super.Ct. 1998) (citing Standard Venetian Blind Co. v. American Empire Ins. Co., 503 Pa. 300, 469 A.2d 563 (1983)). In addition, this approach conforms to Pennsylvania’s policy of interpreting insurance coverage clauses “broadly so as to afford the greatest possible protection to the insured.” Eichelberger v. Warner, 290 Pa. Super. 269, 275, 434 A.2d 747, 750 (1981) (citing Mohn v. American Cas. Co. of Reading, 458 Pa. 576, 326 A.2d 346 (1974), and Penn-Air, Inc. v. Indemnity Ins. Co. of N. Amer., 439 Pa. 511, 269 A.2d 19 (1970)). See also Butterfield v. Giuntoli, 448 Pa. Super. 1, 14 n.8, 670 A.2d 646, 652 n.8 (1995) (“if a policy is reasonably susceptible of two interpretations, it must be construed in the insured’s favor so as not to defeat, unless clearly necessary, the claim to indemnity which the insured intended to obtain”).

Because the Policy is ambiguous, the court must construe the Provision against Legion and conclude that Zone A, as used in the Provision, does not include Zone AE.⁶ As a result, the deductible that applies in Zone AE is \$25,000.00 and not the maximum limit available under the National Flood Insurance Program.⁷

Legion's reference to the documents it received from FEMA, attached as Legion's Motion Exhibit 3, does not require a different conclusion. The FEMA documents indicate that the Property is in a "SPECIAL FLOOD HAZARD AREA," defined as a zone "BEGINNING WITH LETTERS "A" OR "V.'" However, the Policy Provision does not track this language.

⁶ If anything, this interpretation, as submitted by the Plaintiffs, is the more logical of the two. Under the Policy, the modified deductible applies to "Zone A" and "Zone V." As noted, "Zone A" can be read as either Superzone A or Subzone A. If Zone A in this context means Superzone A, then mentioning Zone V would be redundant, as Superzone A includes Zone V. If, however, Zone A means Subzone A, the higher deductible would apply to Subzone A and Zone V only and not to any of the other components of Superzone A. As a result, it is more reasonable to conclude that the Policy refers to Subzone A and does not cover Zone AE or the other components of Superzone A.

⁷ Admittedly, this conclusion differs from that reached by the Hartford Fire Insurance Company court. In that case, the court found that the insuring party did not draft the policy provision in question, thus removing the rationale for construing the policy against it.

However, this court does not believe that the specific drafter of a policy is of central importance. Pennsylvania law focuses on the perspective of the insured party and not the role played by the insurer as a policy drafter or otherwise. See Redevelopment Auth. of Cambria Cty., 454 Pa. Super. at 387, 685 A.2d at 588 ("[t]he proper focus regarding issues of coverage under insurance contracts is the reasonable expectation of the insured"); Pennsylvania Nat'l Mut. Cas. Ins. Co. v. Traveler's Ins. Co., 405 Pa. Super. 149, 153-54, 592 A.2d 51, 53-54 (1991) (even where a dispute is between two insurers, a court must interpret an insurance policy as it would be understood by an insured party). This is partly because the general contract principle of construing an agreement against the drafter is but one of the reasons that Pennsylvania law favors broad interpretations of insurance policies. Thus, the fact that Legion is the insurer under the Policy obviates the need to determine who precisely drafted the Policy.

The increased deductible does not apply to all “special flood hazard areas” or zones beginning with the letter “A,” but rather to Flood Zone A or V. If Legion had intended to use the FEMA terms, it should have inserted language to that effect in place of the ambiguous Provision before the Court. The fact that it did not do so fatally undermines its argument.

II. Coverage and Amount of Damages

The court is unable to resolve the remaining disputes due to outstanding genuine issues of material fact. While the parties agree that the Property is located in Zone AE, they do not agree on who is covered by the Policy. Plaintiffs’ Motion at ¶ 1. In addition, Legion disputes the amount of damage suffered by the plaintiffs. Plaintiffs’ Motion at ¶ 4.

Accordingly, the court cannot resolve the entire matter and must deny the Motions to the extent that they go beyond the issue of the applicable deductible.

CONCLUSION

Because genuine issues of material facts remain outstanding, neither Motion may be granted in its entirety. However, based on the facts not in dispute, this court finds that:

1. For the purposes of Legion Insurance Co. Policy No. CF3-0046696-99, any structure situated in Zone AE is **not** situated in flood zone A or V; and
2. The applicable deductible under the Policy for any structure situated in Zone AE is \$25,000.00 and not the maximum limit available under the National Flood Insurance Program.

BY THE COURT,

ALBERT W. SHEPPARD, JR., J.