

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
(302) 856-5257

September 4, 2012

Mary E. Sherlock, Esquire
Weber, Gallagher, Simpson, Stapleton,
Fires & Newby, LLP
19 South State Street, Suite 100
Dover, Delaware 19901

Richard E. Berl, Jr., Esquire
Smith Feinberg McCartney & Berl,
LLP
406 South Bedford Street
P.O. Box 588
Georgetown, Delaware 19947

Re: *Brebner v. Wilmington Insurance Co.*;
C.A. No. S11C-02-030

Date Submitted: August 10, 2012

Date Decided: September 4, 2012

On Plaintiffs' Motion for Summary Judgment: GRANTED
On Defendant's Motion for Declaratory Relief: DENIED

Dear Counsel:

This is the Court's decision on the dispositive motions that have been filed in the above-captioned case. The underlying facts are undisputed.

Plaintiffs own a home in Rehoboth Beach, Delaware. In a major snowstorm in the winter of 2010, a cast iron radiator on the second floor of the home broke causing water to escape. The radiator was a part of a hot water heating system. Plaintiffs' expert has opined that the heating system is a closed loop system that circulates the same water unless the water volume drops, in which case a valve opens to permit "new" water to

enter the loop. The bottom line is that the hot water radiator continued to leak after the initial break because this valve allowed new water from the regular water supply pipes to continue pouring through the heating pipes to the radiator and out into the house. Thousands of gallons of water entered the second floor, flowed down through the first floor and into the basement. Rising water in the basement caused the furnace to cut off, thereby allowing a bathroom water pipe to freeze, burst and contribute to the damage. The resultant damage was extensive and Plaintiffs seek from their insurer, Defendant, coverage well in excess of \$200,000.00.

Defendant acknowledges that the homeowner's insurance policy in place at the time provides for coverage but argues the insurance policy's water damage limitation endorsement limits Defendant's liability to \$10,000.

Both parties have filed briefs seeking a declaratory judgment and/or summary judgment on the grounds of the endorsement language. Because there is no factual dispute and briefing has been completed, this matter is now ripe for decision.

Both partes agree that, but for the limitation endorsement, there would be coverage for water damage arising from the accidental discharge of water or steam from the heating equipment.

In a nutshell, Defendant takes the position that the endorsement on water damage encompasses any and all water damage regardless of how the damage occurred. Plaintiffs argue the endorsement limits Defendant's liability in the event the water damage

originates from the water pipes or lines, as opposed to the heating system.

The parties agree as to the applicable law for the proper construction of a contract, including an insurance contract. If the contract language is clear and unambiguous, the parties are bound by the clear meaning of the contract.¹ If there is an ambiguity in an exclusion that creates more than one reasonable interpretation then the policy must be strictly construed against the insurer.² But an ambiguity must truly exist and the courts are not free to find coverage where the language clearly excludes or limits coverage.³

With this background in mind, it is appropriate to set forth the language of the body of the policy that, but for the exclusion, would provide coverage and also the language of the exclusion at issue.

The Homeowners Coverage Form provides:

Subject to all applicable provisions of this policy, property covered under Coverages A and B and Coverage C is insured for fortuitous direct physical loss, as follows:

...

B. Coverage C

...

- **Water Damage:** accidental discharge or overflow of water or steam – other than that caused by freezing – from within air conditioning, heating, or plumbing equipment, or home appliances on the residence premises.

¹ *Hallowell v. State Farm Mut. Auto. Ins. Co.*, 443 A.2d 925, 926 (Del. 1982).

² *Steigler v. Insurance Co. of North America*, 384 A.2d 398, 400-01 (Del. 1978).

³ *Apotas v. Allstate Ins. Co.*, 246 A.2d 923, 924-25 (Del. 1968).

The Water Damage Limitation of Loss exclusion provides:

The Water Damage Limitation of Loss exclusion reads, in pertinent part, “We will pay, up to [\$10,000], for water damage to your property caused by leaking, breaking or bursting of water pipes or lines.”

I am satisfied that the exclusion's language is not as broad as Defendant would like. The limitation on coverage to \$10,000 is for water damage "caused by leaking, breaking or bursting of water pipes or lines." When compared to the body of the policy, it is clear that water damage can arise from other sources such as a heating or air conditioning system. If Defendant wanted the exclusion to limit its liability to water damage regardless of the source or cause thereof, it could have clearly stated the same. I find that the cast iron radiator does not fall into the category of a "water pipe or line." To the extent others may construe the language to be ambiguous, then I must construe the contract exclusion strictly against the insurer.⁴ Water damage caused by a cast iron radiator, a piece of heating equipment, is not subject to the \$10,000 limitation of liability exclusion.

Plaintiffs' Motion for Summary Judgment is GRANTED and Defendant's Motion for Declaratory Judgment Relief is DENIED.

IT IS SO ORDERED.

Very truly yours,

T. Henley Graves

cc: Prothonotary

⁴ *Steigler*, 384 A.2d at 400-01; *State Farm Fire and Cas. Co. V. Hackendorn*, 605 A.2d 3 (Del. Super. 1991).