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## **The perils of ambiguous terms in an insurance policy: Zurich American Insurance Co. v. Medical Properties Trust, Inc.**

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In July 2024, the Supreme Judicial Court of Massachusetts ruled in favor of insureds in a dispute over an ambiguous term in two policies insuring Norwood Hospital in Norwood, Mass. The issue at hand in *Zurich American Insurance Company v. Medical Properties Trust, Inc.* (and a consolidated case [1]) (Docket No. SJC-13535), involved a severe storm with heavy rain that caused damage to the hospital basement and to the hospital's main buildings caused by seepage through the courtyard roof and parapet roof. The owner of the Hospital, Medical Properties Trust, Inc. (MPT) and the tenant, Steward Health Care System LLC [2] (Steward), both had insurance policies for the Hospital, MPT's coverage being through Zurich American Insurance Company (Zurich), and Steward's through American Guarantee and Liability Insurance Company & another (AGLIC).

Both policies had coverage for damages of up to \$750 and \$850 million but stipulated lower coverage limits for damage to the hospital for "Flood" at \$100 and \$150 million ("Flood Sublimits"). The policy provision "Flood" is defined as "a general and temporary condition of partial or complete inundation of normally dry land areas or structures caused by...the unusual and rapid accumulation or runoff of surface waters, waves, tides, tidal waves, tsunami, the release of water, the rising, overflowing or breaking of boundaries of nature or man-made bodies of water." Both Steward and MPT submitted proof of loss claims to their respective insurers that exceeded \$200 million, but the insurers responded that damage to the hospital was caused by "Flood", which limits both MPT and Steward to their respective Flood Sublimits. The insurers, MPT, and Steward had differing opinions on the definition of "surface waters," thus commencing litigation to determine the extent of coverage

available to MPT and Steward for damage to the hospital.

Ultimately, the parties agreed that the damage to the basement was caused by “Flood,” and therefore subject to the “Flood Sublimits.” However, the parties disagreed as to whether the damage as a result of rain seeping in through the courtyard roof and parapet roof was caused by “Flood,” because of the ambiguous definition of “Flood.” The United States District Court for the District of Massachusetts held that the term “surface waters” in both policies’ definition of “Flood” included rainwater accumulating on the rooftop. The judge allowed an interlocutory appeal due to the substantial difference in opinion of the term “surface water” under the definition of “Flood.” The Court noted that case law across the country is divided on this issue. MPT and Steward appealed, and the First Circuit certified a question to the Massachusetts Supreme Judicial Court (SJC), “Whether rainwater that lands and accumulates on either (i) a building’s second-floor outdoor rooftop courtyard or (ii) a building’s parapet roof and that subsequently inundates the interior of the building unambiguously constitutes ‘surface waters’ under Massachusetts law for the purposes of the insurance policies at issue?”

The SJC concluded that the meaning of “surface waters” and the definition of “Flood” under the policies are ambiguous in regard to the accumulation of rainwaters on roofs, finding that ambiguity is not the party’s disagreement of a term’s meaning, but rather where it is susceptible of more than one meaning and reasonably intelligent persons would differ as to which meaning is the proper one. The SJC noted there is no consistent interpretation in case law for “surface waters” to include rainwater accumulating on a roof, reasoning that if the policy language is ambiguous as to its intended meaning, then the meaning must be resolved against the insurers that drafted the terms, as they had the opportunity to add more precise terms to the policy and did not do so.

This case is an example of the importance for all parties to closely review the language of their insurance coverage policies to ensure that coverage is consistent with their lease obligations. Additionally, this dispute also draws attention to the importance of casualty provisions in leases. It is important to negotiate the burden of costs in the event of caps or insufficient insurance, along with termination rights for each party.

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