

Building Materials Corporation Of America D/B/A Gaf Materials Corporation Vs. Allstate Insurance Company, Et Al.

Year: 2011

Court: New Jersey Supreme Court

Case Number: 70413

In this case, UP sought to provide the court with policyholders' perspectives on why an Appellate Division holding needs to be reversed. The holding relates to how a policyholder can obtain insurance coverage for the settlement of a mass tort class action which alleges both covered third-party property damage and excluded damage to the policyholder's "own product." The Appellate Division ruling essentially makes the quest for coverage in this scenario into a "suicide mission" for the policyholder. In order to obtain coverage for the settlement, the Appellate Division held that the policyholder would be required to prove actual liability for third-party property damage and the amount of such third-party damage, as opposed to property damage to its own product, "to a reasonable degree of certainty." This puts the burden on the policyholder both to (i) admit that its product caused the damage in the first place, and (ii) the amount of covered versus uncovered damage (which is contrary to NJ and every other state's laws which put the burden of proof of application of an exclusion squarely on the insurance company). Under this holding, the insurance company is relieved of its burden to prove what part of the damage was excluded. A copy of the court's published decision is attached. UP argued for the proper rule that where a settlement is objectively reasonable, it will be covered as long as the complaint alleged potentially covered property damage for which the policyholder reasonably believed it could be held liable. This creates a presumption of coverage which the insurance company has the burden to overcome through proofs that part or all of the settlement amount was for excluded "own product" damages.

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UP's brief was written pro bono by Carl A. Salisbury, Kilpatrick Townsend & Stockton LLP

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