

Insurer Off Hook For Flood Claim Despite Knowing Co.'s Risk

Law360

An electricity meter vendor that suffered flood damage at a New Jersey warehouse caused by Hurricane Irene can't hold its insurance company or the broker liable for failing to disclose the risk of flooding and neglecting to recommend flood insurance, a New Jersey appellate court ruled Wednesday. The appellate panel upheld a 2015 decision to toss the suit, ruling that Satec Inc. had not provided enough evidence that Hanover Insurance Group Inc and Centric Insurance Agency, which advised Satec about its policy, had been negligent by not telling Satec that its warehouse was located in an area at high risk of flooding or ensuring that it was covered for floods. Satec sued Hanover, Centric, and one of Centric's agents in 2012 after Hanover's subsidiary denied a \$2.3 million claim Satec filed due to damage from Hurricane Irene in 2011, noting that flood damage was specifically excluded from Satec's business owner's policy, according to the decision. Satec alleged that both Centric and Hanover had known prior to Hurricane Irene that Satec's warehouse was located in a flood zone but hadn't informed it of this fact and that both had been negligent by not making sure that the warehouse was covered for flooding. David Jaroslawicz, an attorney for Satec, told Law360 that Satec believed Hanover in particular had deliberately withheld the information that the warehouse was in a flood zone because Hanover did not offer flood insurance and was worried it would lose Satec's business. At trial, an expert for Satec, Stanley Hladik, testified that Centric and Hanover had violated standards for the insurance industry by failing to disclose information about the flood zone to Satec when Satec did not have flood insurance. But Centric said it had advised Satec that both flood and earthquake damage were excluded under a standard property policy and recommended that Satec obtain flood insurance. It also disputed the expert witness's claims that not informing Satec violated standard practice, according to the appeals court's decision. The trial court ruled that Hladik's testimony was excluded because he had been unable to cite an external authority to back up his contention that Centric had been negligent by not ensuring that Satec had flood insurance. The appeals panel backed this judgement, saying that without being able to back up his conclusions with evidence about what constituted standard practices within the industry, Hladik could only deliver an

opinion. Since Satec had not produced any admissible evidence that Centric and Hanover had been negligent, the appeals court ruled, the trial court was right to grant Centric and Hanover summary judgement. The appellate panel also determined that Centric had not been acting as an agent of Hanover when it advised Satec on insurance policies. David Jaroslawicz, an attorney for Saetec, told Law360 the decision was “unfortunate” and “has the facts all wrong and the law all wrong from our point of view.” He said the court’s ruling that Satec’s expert needed to cite an external authority was particularly frustrating, calling it “form over substance.” Jaroslawicz said he believed the decision would have been different if Judge Carol E. Higbee, who died in January after oral arguments but before a decision was reached, had been part of the decision. “Based on her questions, she really understood,” Jaroslawicz said. Counsel for Hanover and Centric did not respond Wednesday to a request for comment. The case was heard by Judges Alvarez, Accurso and Manahan, with Judge Carol E. Higbee also participating prior to her death in January 2017. Satec is represented by David Jaroslawicz and Elizabeth Eilender of Jaroslawicz & Jaros. Hanover is represented by Craig M. Terkowitz of Law Offices of Terkowitz & Hermesmann. Centric is represented by Jason S. Feinstein and Jill R. Cohen of Eckert Seamans Cherin & Mellott, LLC. The case is Satec Inc. v. Hanover Insurance Group et al., case number A-5103-14T4 in the Superior Court of New Jersey Appellate Division. –Editing by Pamela Wilkinson.