

NJ Flood Damage Victim Can't Hold Its Insurance Company Liable For Failing To Disclose The Risk Of Flooding And Neglecting To Recommend Flood Insurance

Law360

The New Jersey Appellate Division on Monday ruled that an insurance broker sued by a tool manufacturer whose flood policy didn't cover all of the Superstorm Sandy damage it incurred hadn't been required to sell the client a policy with higher limits. The three-judge panel's decision dealt a blow to Harrison-based C.S. Osborne & Co. Inc., which accused Bollinger Inc., along with an insurance carrier and underwriter, of negligence because the monetary damage it suffered from the October 2012 storm surpassed the company's \$1 million flood policy. The appeals judges turned to case law setting forth that, absent a special relationship between the broker and the insured, there's no common law duty to advise the policy holder of the possible need for higher limits upon renewal of the policy. Further, language in C.S. Osborne's policy even indicated that higher limits may have been available, and invited the insured to inquire about them if interested, the opinion said. "Bollinger never told plaintiff anything that would reasonably cause plaintiff to rely on his quotes as recommendations for the proper amount of insurance coverage," the opinion said. C.S. Osborne had argued that a trial court ruled there had been no special relationship between the company and Bollinger — a determining factor as to the extent of the duty an insurer owes an insured, as dictated by the New Jersey Supreme Court's 1991 ruling in *Cheng Lin Wang v. Allstate Ins. Co.* — before considering the standard set by another key case. In *Carter Lincoln-Mercury Inc., Leasing Div. v. EMAR Group Inc.*, the New Jersey justices held in 1994 that "The duty of a broker or agent ... is not unlimited." Looking to *Carter Lincoln-Mercury*, C.S. Osborne had claimed the relationship was "special and unique" because Bollinger, its exclusive broker for over a decade, would unilaterally review its insurance and make recommendations. Bollinger had even obtained additional flood limit

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quotes for plaintiff's Missouri location, the opinion said. Also, Bollinger's representative toured the New Jersey facility on multiple occasions, according to the opinion. C.S. Osborne's statement of facts suggested the visit put Bollinger on "notice to the risks associated with the property and gave rise to a duty." But the appeals court disagreed, noting that the Carter Lincoln-Mercury case didn't overrule the special relationship requirement in Wang. C.S. Osbourne also argued that Bollinger knew of the "catastrophic risk of flood" when it listed \$11.7 million — an amount more than 10 times greater than the policy limits — as the replacement cost for its Harrison buildings and their contents in its 2012 renewal proposal. However, the appeals judges found that "Bollinger did not have any more information than plaintiff, and nothing in the record shows Bollinger acted to cause plaintiff to rely on it to recommend the proper amount of insurance coverage." The policy at the heart of the dispute was issued by Traveler's Insurance Co. and covered three commercial buildings in Harrison, along with C.S. Osborne's Missouri property, the opinion said. The policy included "broad form flood" coverage of \$1 million and was in effect from 2004 through the date of Superstorm Sandy. Over the course of Bollinger's representation, C.S. Osborne's broker suggested terrorism coverage and employment practices liability insurance coverage, the opinion said. Also, an account representative recommended products recall coverage noticing the absence in the company's policy and made other suggestions for coverage options and increases. In an amended complaint filed in September 2014, C.S. Osborne alleged broker malpractice, negligence, breach of contract, violation of the implied covenant of good faith and consumer fraud. A Hudson County Superior Court judge dismissed the claims, finding the record "discloses no suggestion that" Travelers would have paid more than the insurer did but for any alleged wrongdoings by Bollinger, the opinion said. C.S. Osborne's subsequent motion for reconsideration was denied. "The underlying import of this ruling is that a New Jersey insurance broker is apparently merely an "order taker" so any claim of a fiduciary obligation owed by a broker to its client is illusory," C.S. Osborne's attorney, Paul E. Paray, told Law360. Bollinger's attorneys didn't respond to a request for comment. Appellate Division Judges Marie Lihotz, Richard S. Hoffman and Amy O'Connor sat on the panel. C.S. Osborne is represented by Paul E. Paray of Paray Law Group LLC. Bollinger is represented by Christopher P. Leise, Marc L. Penchansky and Alicia M. Van Sciver of White and Williams LLP. The case is C.S. Osborne & Co. Inc. v. The Charter Oak Fire Insurance Co. et al., case number A-2182-15T4, in the Superior Court of New Jersey, Appellate Division. -Editing by Alyssa Miller. Updated: This article has been updated to include a comment by attorney Paul E. Paray.

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