

## **Recent New York Case re: Coverage for water from drain back up**

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Property Insurance Coverage Law Blog, June 3, 2013 by Shaun Marker So You Have A Back Up Of Water From A Drain Line; Was Blockage On or Off the Insured Property? If you have a claim based on a back up of water from a drain line into an insured property, one of the first questions property insurance professionals may ask is whether the blockage that caused the back up originated on or off the insured property. One of the most intriguing things in the area of first party property insurance is how the little details can make a drastic difference in claims. A few feet can mean the difference between a covered loss and an uncovered loss. Recently, a New York trial court ruled that a property insurance carrier has to cover a claim for damages from waste water back up into apartment buildings because the insurance carrier failed to prove the damages were caused by a blockage that originated off the insured property.<sup>1</sup> Two buildings were damaged by waste water that entered through bathtubs, condensation drains, and laundry room drains located in the basement levels. The waste water backed up due to a blockage in a pipe through which waste water from the buildings was discharged. Exactly where that blockage occurred was not established. The insurance carrier denied coverage for the loss because the policy excluded coverage for losses caused by “water which backs up through sewers or drains.” There were two competing policy provisions at play in the case. While the insurance carrier relied on the clause excluding coverage for damages caused by “water which backs up through sewers or drains,” the policyholder pointed out another policy provision that explicitly provided coverage for “loss caused by the accidental leakage, overflow or discharge of liquids or steam from a plumbing ... system.” The policyholder argued the policy provisions operate together to provide coverage if the blockage that caused the overflow or discharge occurred within his “plumbing system.” He also asserted that, while New York courts have not addressed the issue, numerous courts in other jurisdictions have determined that a “plumbing system” includes all plumbing and pipes located on the insured premises and the phrase “sewers and drains” refers to facilities located off the insured premises. The trial court noted the insurance carrier failed to present any evidence that the blockage occurred off the insured property, so it

was unable to support its defense. The Court ordered the insurance carrier to provide coverage for the losses according to terms of its policy. Insurance carriers generally have a high burden to prove exclusions in insurance policies. Exclusionary provisions are interpreted in favor of the policyholders if the terms are open to more than one reasonable interpretation. If your carrier denies a claim, you should have it reviewed by competent insurance representation to see if the facts support recovery. 1 Pichel v. Dryden Mut. Ins. Co., 2011-0449, 2013 NY Slip Op. 23172 (Sup Ct, Tompkins County May 23, 2013).