
New York State Court Allows Policyholder to Pay Minimum Deductible for Flood Loss

by Joseph D. Jean and Teresa T. Lewi

In a January 2014 decision that may prove valuable to policyholders in their disputes over deductibles, a New York state trial court ruled that the appropriate deductible applicable to an oil terminal operator's \$2.28 million Superstorm Sandy flood loss claim was the minimum deductible—thus rejecting the insurer's position that the deductible should be calculated based on a percentage of the total value of the insured property, as such a construction would result in a \$2.49 million deductible and “render the flood damage sublimit . . . absolutely meaningless.”

Castle Oil Corporation (“Castle Oil”), the owner and operator of a New York City fuel oil terminal with a total insurable value of \$124.7 million, was insured by Ace American Insurance Company (“Ace”) at the time of Castle Oil's flood loss in October 2012. Ace's all-risk commercial property policy had been endorsed with flood coverage subject to a \$2.5 million sublimit. An additional endorsement provided that the deductible for flood damage in special flood hazard areas would be “2% of the total insurable values at risk per location subject to a minimum of \$250,000.00.”

In *Castle Oil Corp. v. Ace American Ins. Co.*, No. 55812/13 (N.Y. Sup. Ct. Jan. 2, 2014), Ace contended that the appropriate calculation for the flood deductible was 2% of \$124.7 million (the total insurable value), which equaled approximately \$2.49 million. According to Ace, because this deductible amount exceeded Castle Oil's \$2.28 million claim, Ace did not owe coverage for the loss. Castle Oil, however, pointed out that a policy endorsement expressly stated that the total insurable values provided are “for premium purposes only,” and argued that the flood deductible applies only to insurable values “at risk” of flood damage. The value of the property actually “at risk” of flood loss, according to Castle Oil, is reflected by the \$2.5 million flood sublimit. Because 2% of the flood sublimit is less than \$250,000, Castle Oil asserted that the proper deductible is \$250,000.

Westchester County Supreme Court Justice Mary Smith granted Castle Oil's partial summary judgment motion for a declaratory judgment that the applicable flood deductible is 2% of the flood sublimit, subject to the \$250,000 minimum. Justice Smith emphasized that in order to give meaning to the phrase "at risk," the "total insurable values at risk per location" must refer to the flood sublimit, rather than the total insurable value of \$124.7 million. Ace's construction of the deductible, according to Justice Smith, would result in no coverage for Castle Oil's multimillion-dollar loss and thus render "the flood insurance plaintiff believed it had procured illusory," which the judge stressed "could not have been plaintiff's intent."

Justice Smith further noted that the term "values at risk" was not defined in the policy and that the endorsement expressly contained a "disclaimer" that the total insurable value was set forth "for premium purposes only." Because the policy did not indicate which values would be used to calculate the flood deductible, the judge concluded that the deductible provision could be ambiguous, and any "ambiguities in insurance policy exclusionary clauses" are liberally construed in favor of the policyholder.

In light of this decision, courts may increasingly find that insurers' calculations of deductibles are improper where the policy does not provide that deductibles are calculated from the total insurable values. Policyholders should carefully review their policies, including deductible provisions and endorsements, to ensure that they—and their insurers—are calculating deductibles appropriately in the event of a loss, and that their policy's deductible language accurately reflects their intent.

If you have any questions about the content of this client alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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