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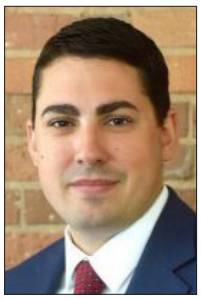
Insurance and Injury Corner: Frozen pipes claims: What constitutes reasonable care?



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Daily Record Columnist

As we are enjoying the summer months here in Western New York, a recent decision from the Appellate Division, Fourth Department has provided a reminder for homeowners to take the proper winterization precautions for their unoccupied or seasonal homes. Attorneys and insurance professionals who specialize in first party insurance coverage cases will periodically see claims for property damage caused by frozen pipes. These types of losses most frequently arise when a property is left unoccupied and unattended for a period of time, and whether there is coverage for such claims often hinges on what constitutes "reasonable care."

When determining whether there is coverage for a loss, it is critical to review the language of the insurance policy. Language differs from policy to policy. The most common homeowners' insurance policy form is the Homeowners 3—Special Form. It is commonly referred to as the HO 3. In general, the HO 3 provides coverage for direct physical loss to property. As relevant to our discussion here, the HO-3 states that it does not insure against loss caused by "freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing." The HO 3 provides an exception, stating "[t]his provision does not apply if you have used reasonable care to: (a) maintain heat in the building; or (b) shut off the water supply and drain all systems and appliances of water."

Thus, when a loss is caused by frozen pipes, a significant consideration in determining if there is coverage is whether the insured used "reasonable care" to maintain heat at the property. What constitutes "reasonable care" has been the subject of litigation, and the Fourth Department's recent decision in McAleavey v Chautauqua Patrons Ins. Co., (195 AD3d 1551 [4th Dept Jun. 17, 2021]), provides an interesting example of this area of law.

In McAleavey, the plaintiff owned a seasonal home that was insured by the defendant insurer. During January or February 2018, the heating system in the home failed, and, unfortunately, the home sustained extensive water damage when the plumbing system froze and burst from the lack of heat. The plaintiff filed a claim for property damage with the defendant, and the defendant denied the claim on the basis that the plaintiff failed to use reasonable care to maintain the heat. Based on the briefing from the appeal, it appears that the defendants denied the claim because the plaintiff failed to inspect the property for 43 days during the winter months. The policy language at issue was similar to the language contained in the HO-3 provision, but it was an exclusion in the policy.

After the denial of coverage, the plaintiff commenced an action, alleging that the defendant breached the insurance policy by denying the claim. Eventually, the plaintiff moved for partial summary judgment, and the defendant cross moved to dismiss the action. Both parties acknowledged that the case turned on the issue of whether the plaintiff took reasonable care to maintain the heat.

The Fourth Department found that the evidence showed: (1) the heating system was recently installed, was regularly maintained, and never required repairs; (2) the plaintiff set the temperature of the home to approximately 50 degrees in the late fall; and (3) the plaintiff checked on the home approximately 15 times during the winter months, and during his visits, the plaintiff checked the temperature of the home, made sure no windows were broken, that the toilets flushed, and that the water ran (id. at 1553). The plaintiff last visited the home in early January 2018, but he later was hospitalized with a broken leg that prohibited him from returning to the home. However, there was evidence that the plaintiff had his neighbors check on the property's exterior during his absence. The property damage was discovered on Feb. 24, 2018.

The trial court granted the defendant's cross motion for summary judgment, concluding that the plaintiff had not taken reasonable care to maintain the heat as a matter of law. The trial court found that failing to inspect the property for 43 days during the winter months of January and February was unreasonable as a matter of law.

On appeal, however, the Fourth Department disagreed, reversed, and granted summary judgment in favor of the plaintiff. The Fourth Department reasoned that the term "reasonable care" was not defined in the policy and was ambiguous. Therefore, since "reasonable care" was ambiguous, it was subject to the general principle that ambiguities in an insurance policy are construed against the insurer (id.).

The Fourth Department concluded that the loss was covered and that the exclusion did not unambiguously apply because the plaintiff made reasonable efforts to maintain the heat "in this case" (id.). Accordingly, the court reversed the trial court's decision and referred the matter for an inquest on damages.

The McAleavey decision may be contrasted with the Third Department's decision

in Stephenson v Allstate Indem. Co. (160 AD3d 1274 [3d Dept 2018]). Stephenson was also a frozen pipes case, and the Third Department found that the insured failed to use reasonable care as a matter of law where the insured left the property unoccupied for three months, and the insured did not inspect the property or take any other action to ensure that the heat was maintained (id.). Notably, the Third Department's decision did not conclude that the term "reasonable care" was ambiguous. The McAleavey and Stephenson decisions may also be contrasted with the Third Department's decision in McCabe v Allstate Ins. Co., (260 AD2d 850 [1999]), in which the Court concluded that there were issues of fact whether the insured took reasonable care to maintain the heat.

Some takeaways from the recent caselaw from the Appellate Divisions are as follows: always check the policy language, and homeowners should take "reasonable care" to maintain the heat during the winter, including setting the temperature to an appropriate level and routinely inspecting the property. Additionally, during the investigation of a frozen pipes claim, it is important for insurers to determine what steps were taken, if any, by the homeowner. Were the efforts taken more akin to those in McAleavey or were they more akin to the "wholesale neglect" in the Stephenson case?

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