COURT OF APPEALS
DECISION
DATED AND FILED

January 29, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-0717 **Cir. Ct. No. 99-CV-917**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

JOHN O. SHALINE AND ROBERT YUNKER,

PLAINTIFFS-RESPONDENTS,

V.

STATE FARM FIRE AND CASUALTY COMPANY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County: DONALD R. ZUIDMULDER, Judge. *Affirmed*.

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. State Farm Fire and Casualty Company appeals a judgment awarding $140,000 in damages to John Shaline and Robert Yunker, for water damage to their apartment building. State Farm contends that the trial court erroneously interpreted the insurance policy because a glass breakage exception to

a floodwater exclusion cannot create coverage. We conclude that the trial court correctly interpreted the insurance policy. Therefore, we affirm the judgment.

¶2 Shaline and Yunker own an apartment building in Sheboygan, Wisconsin, that was insured by a State Farm apartment policy. In August 1998, due to a major storm, many parts of the city, including where the apartment was located, were flooded. The water seeped into the apartment through its siding, vents, window frames and other openings. As the water outside the building increased in depth, it bent patio doorframes, eventually causing the glass to break the patio doors of numerous apartments. The sudden onrush of water caused further damage to the building.

¶3 State Farm investigated the claimed loss and determined that its policy excluded coverage for floodwater damage, with the exception of the broken glass. It paid the cost to replace the broken glass in the patio doors, the sum of $11,940.93, less a $1,000 deductible.

¶4 Relying on an exception to the floodwater exclusion, Shaline and Yunker brought this action to recover damage to the apartment building caused by the water bursting through the broken glass patio doors. The trial court denied State Farm's summary judgment motion for dismissal on the ground of lack of coverage. The matter proceeded to trial. The jury awarded $100,000 for damage to the building that occurred after the water poured through the broken glass. The jury also awarded $40,000 for lost income due to the floodwater damage that occurred after the glass broke. The trial court denied State Farm's post verdict motions and entered judgment on the verdict. State Farm appeals the judgment.

¶5 The issue whether coverage exists is a question of law that we review independently of the circuit court's decision. ***Richland Valley Prods., Inc.***

v. St. Paul Fire & Cas. Co., 201 Wis. 2d 161, 164, 548 N.W.2d 127 (Ct. App. 1996). An insurance policy is construed like other contracts; if no ambiguity exists, its plain meaning controls. ***Kremers-Urban Co. v. American Employers Ins. Co.***, 119 Wis. 2d 722, 735-36, 351 N.W.2d 156 (1984). The test is not what the insurer intended the words to mean but what a reasonable person in the position of the insured would have understood them to mean. ***Richland***, 201 Wis. 2d at 167. Accordingly, we turn to the policy language.

¶6 The policy provides that State Farm will insure for accidental direct physical loss to property covered under the policy, unless the loss is excluded in the "loss is not insured" section. There is no dispute that the claim involved an accidental physical loss to property covered under the policy. The question is whether the claim is excluded.

¶7 State Farm relies on the following exclusion:

> 1. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether the other causes acted concurrently or in any sequence with the excluded event to produce the loss;
>
> ….
>
> d. water, such as:
>
> (1) flood surface water, waves, tides, tidal waves, overflow of any body of water or their spray, or whether driven by wind or not;
>
> ….
>
> But if accidental direct physical loss by fire, explosion, theft, building glass breakage or leakage of water from a fire protective system results, we will pay for that resulting loss; ….

¶8 We agree with the trial court's conclusion that the policy excepted the claimed loss from the floodwater exclusion. Following a broad grant of coverage, the policy excludes coverage for losses caused by floodwater and then lists exceptions to the exclusion. The policy does not unqualifiedly exclude floodwater as a loss not insured. Following the listed exclusions, the next paragraph begins with the word "but" and specifically states that the policy will pay for a loss that results from glass breakage.

¶9 State Farm's contention does not find suport in the policy language. If we were to interpret the exeption to permit coverage only for the broken glass, as State Farm insists, then the recovery for loss by fire and explosion would have to be similarly limited. State Farm offers no rational interpretation that would provide coverage for a fire or explosion, but not for damages resulting from the fire or explosion.

¶10 In context, the exception means damages resulting from the broken glass. Arguably, the damage was caused by the floodwater, not broken glass. However, according to the testimony, if the glass had not broken, there would have been less water damage. The court allowed damages only for that part of the water damage that occurred due to the water flowing through the broken glass. Because there is no dispute that the only damages awarded resulted from the floodwaters that poured in as a result of the glass breakage, the trial court correctly found coverage.

¶11 State Farm contends, nonetheless, that this construction violates the tenets of contract construction because it attempts to use an exception to an exclusion to create coverage for the excluded loss. State Farm argues that

exclusion clauses subtract from coverage rather than grant it and, accordingly, the exception does not limit the effect to the exclusion. We are unpersuaded.

¶12 "A reservation exception to an exclusion does not, standing alone, create coverage unless the claim is cognizable under the general grant of coverage." ***Jaderborg v. American Fam. Mut. Ins. Co***., 2000 WI App 246, ¶17, 239 Wis. 2d 533, 620 N.W.2d 468 (citation omitted). Here, there is no dispute that the claim is for accidental direct physical loss to covered property. Consequently, but for the exclusion, the claimed loss is cognizable under the general grant of coverage. Therefore, the exception to the exclusion results in coverage under the general grant of coverage.

¶13 State Farm relies on ***Richland***. Because of different policy language, however, the ***Richland*** holding does not apply. In ***Richland***, a refrigeration unit was contaminated within the meaning of a policy exclusion. Because the contamination caused clogging that resulted in the loss, the insured argued that the ensuing loss clause excepted the resulting clogging from the exclusion. ***Id.*** We disagreed. We held that although the clogging was a direct physical loss, it resulted from contamination that was excluded from coverage and therefore would not otherwise be covered. ***Id.*** at 172. State Farm argues that here, like ***Richland***, the water damage was a direct physical loss that would not be otherwise covered because it resulted from floodwater that was excluded from coverage.

¶14 We disagree. The policy in ***Richland*** read that it would not "cover loss or damage caused or made worse by: … contamination[.] … If a loss that would otherwise be covered results from one of these causes, we'll pay for the direct loss that results." ***Id.*** at 167. We pointed out that the clogging resulted

from the contamination itself but had the "initial contamination resulted in fire, for example, that loss would have been covered under the ensuing loss clause" because "[l]oss by fire is a loss not otherwise excluded." ***Id.*** at 175-76.

¶15 Here, unlike ***Richland***, the exception to the policy exclusion plainly provides: "But if accidental direct physical loss by fire, explosion, theft, building glass breakage or leakage of water from a fire protective system results, we will pay for that resulting loss." The language in this exception does not limit itself to only those resulting losses that are not excluded. Because of the different policy language, the holding in ***Richland*** does not control.

¶16 State Farm also relies on ***Bulen v. West Bend Mut. Ins. Co.,*** 125 Wis. 2d 259, 371 N.W.2d 392 (Ct. App. 1985), that involved a claim related to the collapse of a basement wall during construction. We considered exclusions in the building contractor's comprehensive general liability policy. We concluded that the policy contained a business risk exclusion: "The policy in question here does not cover an accident of faulty workmanship but rather faulty workmanship which causes an accident." ***Id.*** at 265. The exception to the exclusion assured, however, "that claims premised upon actual or implied warranty will be covered." ***Id.*** "Such claims must nevertheless be otherwise cognizable under the general grant of coverage in the first instance in order to constitute a claim 'to which this insurance applies.'" ***Id.*** We found that the coverage sought was "not included under the general grant of coverage" and was effectively excluded by other provisions. ***Id.***

¶17 ***Bulen*** is not at odds with our holding here. We agree that for an exception to an exclusion to be insured, it must nevertheless fall within the general grant of coverage. Here, there is no suggestion that absent the floodwater exclusion, the loss would not have otherwise been cognizable under the general

grant of coverage. Consequently, the exception to the exclusion limits the exclusion's effect to damages that resulted from the flooding that occurred before the glass was broken. To hold otherwise would be to render the exception meaningless. [1]

¶18 State Farm's interpretation asks us to hold that a "general grant of coverage" is the equivalent of "a general grant of coverage with the applicable exclusions." We conclude that this is a strained construction. If it were accurate, then it would be unnecessary to distinguish between the two concepts. ***Bulen*** and ***Jaderborg***, however, instruct that a general grant of coverage is broader than a general grant of coverage with the applicable exclusions. *Cf.* ***Jaderborg***, 2000 WI App 246 at ¶17 ("A reservation exception to an exclusion does not, standing alone, create coverage unless the claim is cognizable under the general grant of coverage.") (citation omitted). State Farm's citations to authorities do not support its interpretation. Accordingly, State Farm's contention must be rejected.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[1] State Farm asks this court to strike portions of Shaline and Yunker's brief on the ground of inadequate record and legal citation. Record citation is critical. *See* WIS. STAT. §§ 809.19(1) and 809.83. However, in the nine pages to which State Farm refers, there are 27 citations to the record, appendix or State Farm's brief. Although some of the citations are not page specific, we conclude that they are adequate in context and therefore decline State Farm's request to strike. Also, we disagree with State Farm's statement that Shaline and Yunker have "failed to cite any legal authority to support their stated position."