



Policy Applied to Long-term Pool Damage

No Comments

♡ 0

By José Roman | November 27, 2017 | Insurance Coverage Law



Email *

Submit

In a recent, unpublished opinion, the NJ Appellate Division held that the “wear and tear” exclusion of a homeowners insurance policy applied to damage to a pool that occurred over the course of several years.

Beginning in the winter of 2014, Richard and Vicki Klein noticed that their in-ground pool appeared lower than usual. The Kleins then made a claim under their homeowners insurance policy issued by Franklin Mutual Insurance Company (“Franklin”). Once the snow and ice cover melted off of the pool cover, the Kleins also noticed a tree branch in the pool and tears in both the pool cover and lining, with the pool walls bowing inward. The Kleins claimed that a rotting tree branch fell from a neighbor’s property into the pool, the same of which was not observed by either the Kleins or their neighbor. The Kleins’ public adjuster, Thomas Brett, Jr., opined that wind caused a tree branch to fall into the pool, in turn puncturing the pool lining and cover, ultimately creating a “domino effect” that led to the pool damage. Thus, Mr. Brett argued that the Kleins’ claim should be covered.

BROWSE RECENT POSTS

[Court Rejects Claim that Marsh Duped Certain Insurers into an Extra \\$300M in Sandy Flood Coverage](#)

[NJ Supreme Court Shields Landlord from Liability for Child’s Radiator Burn Injury](#)

[Walmart slip and fall](#)



admissible expert testimony to prove their claims.

The Kleins appealed the trial court’s decision, arguing that “the trial judge erred in determining that they were required to prove causation for the claimed damages, and in accepting the defense expert’s opinion, as it is the jury’s province alone to assess the credibility of witnesses.” The Appellate Court disagreed, and affirmed the trial court’s opinion, concluding that the trial court judge’s “factual findings [were] fully supported by the record and, in light of those facts, his legal conclusions [were] unassailable.”

The Appellate Court further noted that insurance policy exclusions are narrowly constructed and that the Kleins offered no expert testimony to rebut the expert opinion of Mr. Moskowitz.

Contact Powell and Roman if you need an experienced attorney.

[Copyright & Trademark Law](#)

[Divorce & Family Law](#)

[Firm News](#)

[Injury Law](#)

[Insurance Coverage Law](#)

[Liability](#)

[Real Estate](#)

[Storm Sandy](#)

[U.S. Supreme Court](#)

