

RIALTO-CAPITOL CONDOMINIUM
ASSOCIATION, et. al.,

Plaintiff,

v.

FIRST MERCURY INSURANCE
COMPANY, et. al.,

Defendants,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET NO. HUD-L-2750-18

FILED

JUL 25 2025

Civil Action

ANTHONY V. D'ELIA, J.S.C.

OPINION

This Opinion shall address the one issue which the parties agreed may be addressed on the papers only, relating to the Defendants Valiant Insurance Company and First Mercury Insurance Company (hereinafter “Valiant and “FMIC”) motion to determine the “insured status of the developer entities”.

While the moving brief was extensive, Plaintiff’s opposition brief, filed on July 14, 2023, concedes that certain parties are covered under the policies indicated but opposes Valiant/FMIC’s arguments relating to the FMIC “2012-13 Excess policy”. In particular, Plaintiff opposes Valiant/FMIC’s arguments that the Designated Operation Exclusion in the FMIC 2012-13 Excess policy bars coverage for MVE and MVC under that policy.¹

By consent, therefore, the following policies apply to the particular insureds:

1. Valiant 2009-10 CGL Policy: Baldwin and Metro Vest Construction (MVC).
2. Valiant 2010-11 CGL Policy: Baldwin and MVC.
3. Valiant 2011-12 CGL Policy: Baldwin, Metro Vest Equities (MVE) and MVC.
4. Valiant 2009-10 Excess Policy: Baldwin and MVC.
5. Valiant 2010-11 Excess Policy: Baldwin and MVC.
6. Valiant 2011-12 Excess Policy: Baldwin, MVE and MVC.
7. FMIC 2011-12 CGL Policy: No insured entity in this matter.

¹ The remaining points in Plaintiff’s opposition brief (filed on July 14, 2023) do not relate to this portion of the motion filed by Defendant Valiant and MFIC.

8. FMIC 2012-13 CGL Policy: MVE and MVC.
9. FMIC 2011-12 Excess Policy: No insured entity in this matter.

Issue Re: "Exclusion of Designated Operations"

While the parties agree that the 2012-13 FMIC Primary Policy insures MCC and MVE, the 2012-13 FMIC Excess Policy contains an Exclusion of Designated Operations Endorsement which provides as follows:

SECTION I-COVERAGE, 2.

Exclusions are amended and the following exclusion is added:
Notwithstanding anything to the contrary contained in the policy or any endorsement attached thereto, it is agreed that this insurance does not apply to "injury or damage" arising out of the rendering or failure to render any services described in the Description of Excluded Operation Schedule contained in this endorsement, regardless of whether such operations are conducted by you or on your behalf. This endorsement applies even if other causes contribute to or aggravates "injury or damage".

The Description of Excluded Operations Schedule provides as follows:

MetroVest Construction Corp.; MetroVest Equities, Inc.; MetroVest Management, Inc. It is the intent of this endorsement to exclude from this insurance all claims, demands or suits arising out of the rendering or of the failure to render any services scheduled above in the Description of Excluded Operations Schedule. There shall, therefore, be no duty or obligation on our part under this insurance to defend, respond to, investigate or indemnify anyone, including but not limited to you, your agents, servants or employees, or any third parties for any such claims, demand or suit.

Valiant/FMIC argue that the language of this exclusion is clear and unambiguous and that the exclusion, when read with the Schedule, can only mean that any services rendered by those named companies in the Schedule fall under the pertinent exclusion.

In opposition, Plaintiff argues that the above language is "ambiguous" because it does not specifically specify what services of the named companies are excluded in that the Schedule only lists the names of those companies, and that the exclusion is therefore ambiguous and should be construed against the moving parties so that the exclusion would not apply to Plaintiff's claims here.

The Court finds that the language is unambiguous and can only be read to mean that any services rendered by those three named companies would fall under the language of the Designated Operation Exclusion contained in the FMIC 2012-13 Excess Policy for MVE and MVC.

The Court recognizes that it may not ignore clear and certain terms when interpreting an insurance policy. Longobardi v. Chubb Ins. Co., of N.J., 121 N.J. 530, 537 (1990). The Court must give the words of the policy “their plain, ordinary meaning”. Zacarias v. Allstate Ins., Co., 168 N.J. 590, 595 (2001). “In the absence of ambiguity, Courts must not engage in a strained construction to support an imposition of liability”. J. Josephson, Inc. v. Crum and Foster, 293, N.J. Super. 170, 216 (App. Div. 1996). A Court must enforce clear and unambiguous policy language as it is written. Flomerfelt v. Cardiello, 202 N.J. 432, 441 (2010).

The Court is “not [to] write for the insured a better policy of insurance than the one purchased”. Gibson v. Callaghan, 158 N.J. 662, 670 (1999). A “genuine ambiguity” arises only when “the phrasing of the policy is so confusing that the average policy holder cannot make out the boundaries of coverage”. Weedo v. Stone-E-Brick, Inc., 81 N.J. 233, 247 (1979).

When applying the above principles to the interpretation of exclusions in an insurance policy, the Court is also mindful that “exclusions in [an] insurance policy should be narrowly constructed”. Nav-its, Inc. v. Selective Ins., Co., of Am., 183, N.J. 110 (2005). Exclusions are “presumptively valid and will be given effect if specific, plain, clear, prominent and not contrary to public policy”. Princeton Ins., Co. v. Chunmuang, 151 N.J. 80, 95 (1997).

Here, the terms of the exclusion are clear, unambiguous, and the language is not so confusing that an average policy holder cannot make out its meaning. To say that the exclusion applies to any services rendered by two specific companies listed in the Schedule (as incorporated into the exclusion language) would lead any average policy holder to conclude that any services by those two companies would fall under the exclusion. As the language is not contrary to public policy and is unambiguous, the Designated Operations Exclusion in the FMIC 2012-13 Excess Policy bars coverage under the policy for MVE and MVC.

So Ordered

ANTHONY V. D'ELIA, J.S.C.

(Decided on July 25, 2025)