STRICT LIABILITY FOR INJURIES CAUSED BY VIOLATIONS OF MASSACHUSETTS BUILDING CODE CLARIFIED

In *Sheehan v. Weaver*, the Supreme Judicial Court held that strict liability imposed by M.G.L. c. 143, § 51 applies to building owners for any injuries caused by any violation of c. 143 and the State Building Code. 467 Mass. 734, at *5 (2014). Further, the court held that a "building," as applied in § 51, includes only large commercial and public structures "in which a large number of people gather for occupational, entertainment, or other purposes." *Id.* at *6 (*quoting Banushi v. Dorfman*, 438 Mass. 242, 244 (2002)).

In *Sheehan*, the court overruled a 1999 decision that held building owners strictly liable for injuries caused by violations of only certain Building Code provisions related to fire safety issues. *See McAllister v. Boston Housing Authority*, 429 Mass. 300, 304 n.5 (1999), *overruled by*, *Sheehan v. Weaver*, 467 Mass. 734 (2014).

The plaintiff's apartment was the third floor of a three-story, mixed-use business-residential structure. The first floor was commercial and the second and third floors were residential. The stairway leading to the plaintiff's apartment was entirely separate from the commercial portion of the building. The plaintiff injured himself while ascending his staircase. *Sheehan*, 467 Mass at *1. At the time of the incident, the sixth edition of the Building Code was in effect. The structure allegedly had eighteen defects and those defects caused the plaintiff's injuries. *Id.* at *2.

The court held that the plain language of the statute required it apply to injuries caused by any violation of the Building Code, not just those related to fire safety issues. *Id.* at *5. In its holding, the court further interpreted the term "building" as it applies to the statute. The court kept a narrow view of "building," holding that it applied to commercial structures, focusing on protecting a "significant number of people . . . ordinarily poorly positioned to determine whether the structure complies with the . . . [C]ode." *Id.* Of note, The definition of "building" in M.G.L. c. 143 allowed the court to examine the building in separate portions (i.e. the residential and commercial sections). *Id.* at *6-7. This line of analysis leaves questions as to when mixed-use building owners could be liable under the statute.

Structures not "buildings" pursuant to M.G.L. c. 143:

- Single-family houses;
- Two-family homes;
- Thirteen-unit condominiums. *See Osorno v. Simone*, 56 Mass. App. Ct. 612, 612-13 (2002);
- Staircase leading to residential portion of mixed-use structure. *See Sheehan v. Weaver*, 467 Mass. 734 (2014).

CORRODED OIL FEED LINE FALLS UNDER CORROSION EXCLUSION RATHER THAN "PERILS" CLAUSE OF POLICY—RHODE ISLAND

In *Nunez v. Merrimack Mutual Fire Insurance Co.*, the Rhode Island Supreme Court analyzed conflicting clauses of a homeowner's insurance policy. No. 2013-129-Appeal, 2014 WL 1509206 (R.I. Apr. 17, 2014). The plaintiffs initiated a claim after finding their corroded oil feed line leaking. The claim was denied by Merrimack. *Id.* at *1. In the homeowner's policy, direct loss to the property caused by "[s]mog, rust or other corrosion, mold, wet or dry rot" was excluded from coverage. *Id.* at *2. Concurrently, losses caused by a "sudden and accidental tearing apart, cracking, burning, or bulging" of a hot water heating system were covered. *Id.* at *2-3.

The court held that the "literal language" of the policy, specifically not insuring for corrosion, was unambiguous. Further, the court, in light of testimony that the oil feed line had corroded over a two-year period, opined that placing the damage within the "[s]udden and accidental" perils coverage would create an ambiguity where one did not exist. *Id.* at *3.

ANTICONCURRENT CLAUSE IN POLICY UPHELD IN MASSACHUSETTS

In *Himelhoch v. Hartford Casualty Insurance Co.*, the Massachusetts Appeals Court upheld a denial of coverage for water damage that was caused by a combination of surface water and backup from a defective drain. 85 Mass. App. Ct. 1115 (2014). The claim was initiated after damage was incurred in a first-floor dentist office following a rain storm. *Id.* at *1.

The policy excluded water damage including surface water (i.e. water from rain or flood). Additional coverage was provided, however, for damage that was caused solely from a backed up sewer or drain. *Id.* at *1 n.2. The policy contained an anticoncurrent clause that barred recovery for damages caused to any degree by surface water. *Id.* at *2.

The plaintiff introduced evidence that the building's sump pump malfunctioned, but the court noted that there was nothing in the record indicating that all of the accumulated water had entered the drain. Because the plaintiff could not prove that the damage was caused "solely" by water from a backed up sewer drain, the anti-concurrent clause barred recovery. *Id.*

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