

Prepared by the Court

FILED

DEC 30 2005 SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION: BERGEN COUNTY
GERALD C. ESCALA DOCKET NO. C-406-04
P.J.S.C.

ERIKA STEINBAUER,

Plaintiff(s),

vs.

EAST COAST ACQUISITIONS, LLC.,
WILKEN MANAGEMENT GROUP,
INC., RAMAPO RIDGE
CONDOMINIUM ASSOCIATION
PHASE II, INC., RESTO CORP., BEM
SYSTEMS, INC., AMERICAN HOME
CONSULTANTS, IN., RE/MAX REAL
ESTATE ENTERPRISES,

Defendant(s).

RAMAPO RIDGE CONDOMINIUM
ASSOCIATION PHASE II, INC.,

Third-Party Plaintiff(s),

vs.

SIRIUS AMERICAN INSURANCE
COMPANY, ETC.,

Third-Party Defendants.

This matter having been opened to the court on motion for summary judgment by third-party defendant Sirius American Insurance Company, and on cross-motion for summary judgment by defendant/third-party plaintiff Ramapo Ridge Condominium Association Phase

II, inc., and on cross-motion for summary judgment by third-party defendant QBE Insurance Corporation, attorneys appearing for the respective parties set out below,

IT IS on this 30th day of December, 2005

ORDERED:

1. Third-party Defendant Sirius America Insurance Company is determined to have a duty to defend or indemnify the Condominium Association under its insurance policy. Its motion is denied. The Association's motion is granted.
 2. Third-party Defendant QBE Insurance Corporation's motion is granted.
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GERALD C. ESCALA, P.J., Ch.

Attorneys' Appearances:

Gennet, Kallman, Antin & Robinson for Sirius American Insurance Company
Sunshine, Atkins, Minassian & Tafuri for Condominium Association
Lester Schwab Katz & Dwyer for QBE Insurance Corporation

Note:

As to Sirius, the language of the Sirius policy says that it will extend liability coverage for "occurrences" that take place within the policy term. Here, it is not disputed that the property damage—the water damage and resultant mold condition—took place during that term. Sirius would have the court read the policy to mean that if property damage occurs during the policy term and if a third party sues the insured during that term, only then is Sirius indemnification triggered. The plain language of the policy does not lead to this interpretation.

As to QBE, that policy clearly contains a mold exclusion; such exclusions have been upheld by our courts. The plain language of the policy supports QBE's interpretation of what is an "occurrence."