

**IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA**

**JACOB and LISA ZUKOFF, individuals,  
and AUTOMOTIVE ACCESSORIES LIMITED, INC.  
A West Virginia Corporation, D/B/A ACCESSORIES, LTD.,**

**Plaintiffs,**

v.

**CIVIL ACTION NO.: 18-C-27  
JUDGE DAVID W. HUMMEL, JR.**

**MOUNDSVILLE SANITARY BOARD, and MOTORISTS MUTUAL  
INSURANCE COMPANY, a foreign corporation,**

**Defendants.**

**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AGAINST  
MOTORISTS MUTUAL INSURANCE COMPANY AND DENYING MOTORISTS  
MUTUAL INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT AGAINST  
PLAINTIFFS**

On June 18, 2019, came the parties for a hearing on the Plaintiffs' Declaratory Judgment Action against the Defendant Motorists Mutual Insurance Company. The Plaintiff appeared in person and by counsel, Andrew G. Meek, the Defendant Motorists Mutual Insurance Company, by counsel Donald J. McCormick, and the Defendant Moundsville Sanitary Board, by its counsel Thomas E. Buck for a hearing on the Plaintiffs' Motion for Summary Judgment against Motorists Mutual Insurance Company and Motorists Mutual Insurance Company's Motion for Summary Judgment against the Plaintiffs, pursuant to West Virginia Rule of Civil Procedure 56.

After reviewing all the pleadings filed in in this matter, and after hearing oral argument from counsel for the parties, the Court finds the following:

1. The Plaintiffs Jack Zukoff and Lisa Zukoff are the owners of Automotive Accessories Limited, Inc. d/b/a Accessories, Ltd. (hereinafter "Accessories, Ltd."). The Plaintiffs' business is located at 1009 1<sup>st</sup> Street in Moundsville, West Virginia.

2. At all relevant times, Jacob Zukoff dba Accessories Limited was insured by Motorists Mutual Insurance Company (hereinafter "Motorists"), Policy No. 33-296858-70E. The policy is an all-risk type of policy.
3. On January 7, 2017, Accessories, Ltd. was damaged when water and sewage entered the building through drains on Plaintiffs' property that were connected to the Moundville Sanitary Board's main sewer.
4. The main sewer had collapsed and became non-functioning at 1<sup>st</sup> Street and was blocking the flow of the sewer line from Washington Avenue into the 1<sup>st</sup> Street sewer at the manhole.
5. Based upon the evidence of the record and convincing argument by counsel, the Court finds that the source of the substances that entered and damaged Accessories, Ltd. did not originate from inside the business.
6. Instead, the evidence proves that water from the sewer main line migrated into the Plaintiffs' lateral sewer line which served as a conduit into the Plaintiffs' business.
7. The evidence further proves that the water from the sewer main was the cause of the Plaintiffs' damages.
8. Motorists contends that the substances that entered and damaged the Plaintiffs' business were the result of a water or sewer backup or overflow, and that the Motorists policy excludes damages resulting from a water or sewer backup or overflow.
9. The Court finds that the Plaintiffs' damages were not the result of a backup or overflow, but rather, the Plaintiffs' damages were caused by the infiltration of water from the sewer main line into the lateral sewer line that served as a conduit into Accessories, Ltd.

10. The Court finds that the substances that entered Accessories, Ltd. did not come from within nor originate within the business.
11. Under the particular facts of this case, the Court finds that perspective is crucial, and because of the manner of ingress into the business and origin of the source of the damaging substances, finds that the Plaintiffs' damages were not the result of a backup.
12. Furthermore, the term "backup" is not defined anywhere in the Plaintiffs' Motorists policy.
13. The Court finds that under the facts of this case, the policy language is ambiguous because it does not define "backup".
14. Having found the term "backup" to be ambiguous, the Court applies the doctrine of reasonable expectations in interpreting the policy language. If the source of the water and sewage is on an insured's premises, an insured would not reasonably expect coverage. It would not be reasonable for Jacob Zukoff dba Accessories Limited to expect coverage in this case if the business was the source of the damaging substances.
15. However, if the damaging substances originated from beyond the insured's property and used the insured's sewer connection as a conduit to enter the insured's property, an insured would reasonably expect coverage. Therefore, it would be reasonable for Jacob Zukoff dba Accessories Limited to expect coverage under the facts of this case where the damaging substances did not originate from inside the business but rather it infiltrated through a conduit into the business as a result of a blockage that was not located on the insured premises.

Therefore, the Court hereby finds that the Policy issued by Motorists to Jacob Zukoff dba Accessories Limited does not exclude coverage for the Plaintiffs' losses. As such, the Court

GRANTS the Plaintiffs' Motion for Summary Judgment against the Defendant Motorists Mutual Insurance Company, and likewise, DENIES Motorists Mutual Insurance Company's Motion for Summary Judgment against the Plaintiffs. All objections and exceptions are saved and preserved.

The Court further ORDERS that the Plaintiffs' action against Motorists Mutual Insurance Company is hereby Bifurcated from the Plaintiffs' action against the Defendant Moundsville Sanitary Board. Pursuant to West Virginia Rule of Civil Procedure 54(b), this is a final appealable Order.

The Clerk is directed to send copies of this Order to counsel for all the parties.

ENTERED:

July 19, 2019

  
Hon. David W. Hummel, Jr., Judge

Alex J. Shook, Esq. (ID No. 7506)  
Andrew G. Meek, Esq. (ID No. 10649)  
HAMSTEAD, WILLIAMS & SHOOK PLLC  
315 High Street  
Morgantown, WV 26505  
(304) 296-3636  
*Counsel for Plaintiffs*

A Copy Teste:  
Joseph M. Rucki, Clerk  
By  Deputy

Donald J. McCormick, Esq. (ID No. 6758)  
DELL, MOSER, LANE & LOUGHNEY, LLC  
Two Chatham Center, Suite 1500  
112 Washington Place  
Pittsburgh, PA 15219  
*Counsel for Defendant Motorists Mutual Insurance Company*