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M & M Corp. of S.C. v. Auto-Owners Ins. Co., 701 S.E.2d 33 (S.C. 2010)

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SOUTH CAROLINA

M & M Corp. of S.C. v. Auto-Owners Ins. Co., 701 S.E.2d 33 (S.C. 2010) (holding that rain water directly channeled into an unfinished storm water drainage system and intentionally discharged onto an insured's property was not surface water or flood water for the purpose of insurance policy collection).

In the process of road improvement, the South Carolina Department of Transportation installed an underground drainage system. However, before the completion of the project, about four inches of rain fell. M&M Corporation ("M&M") owned a hotel that suffered significant damage due to the rainwater draining onto the property from the incomplete drainage system. Auto-Owners Insurance Company ("Auto-Owners") had insured the property, and M&M filed an action seeking recovery under the policy for the water damage. Auto-Owners denied coverage based on the surface water and flood exclusions included in the policy. Both parties filed for summary judgment, and the district court determined that the outcome of the case rested on the definitions of "surface water" and "flood" within the policy. The district court certified three questions to the South Carolina Supreme Court: (1) whether rainwater collected and channeled in the collection system constituted "surface water" under the policy; (2) if the water was not surface water, could it become surface water once it left the collection system, and if so how; and (3) whether the rainwater was "flood water" under the insurance policy?

The court had to determine whether collected rainwater that an incomplete drainage system channeled onto another's property constituted "surface water" or "flood water" under the policy, because the policy did not explicitly define the terms. Generally, courts interpret insurance policy language in light of its plain meaning and construe the policies in favor of coverage. South Carolina law defined surface water as having a vagrant character, with no distinct course, banks, or channels. Additionally, surface waters included waters derived from rain and melting snow. The court held that, although the rainwater was initially surface water, once it was deliberately contained and directed onto a neighboring property, it was no longer naturally flowing and diffuse water, and therefore, the concentrated rainwater from the collection system was not surface water.

Next, the court considered whether the water reverted to surface water after it exited the collection system. The court held that the water did not become surface water again for the purposes of the policy after it has left the collection system. Essentially, because the water only got to M&M's property due to the deliberate containment and directing of the water, the water could not regain the classification of surface water under the policy.

Finally, the court addressed whether the water is "flood water" under the insurance policy. Previously, South Carolina law had not

defined flood water, although here, the court suggested that flood water must breach its containment, either due to a natural occurrence or due to a failure in a man-made system. The court held that the collection system purposely directed the water onto M&M's land, and was therefore not "flood water" under the policy because it did not breach any containment.

In summary, the court answered all three certified questions in the negative; namely that the collected rainwater was not surface water, that it could not regain its status as surface water after exiting the collection system, and that it was not flood water under the policy.

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UTAH

Bingham v. Roosevelt City Corp., 235 P.3d 730 (Utah 2010) (holding that Roosevelt City's diversion of water and the resulting lowering of the surrounding water table did not constitute a taking or interference under the Utah and U.S. Constitutions; however, Roosevelt City's diversion did give rise to a negligence claim with regard to the City's duty to the landowners).

Several property owners in the North Hayden Area ("Group") appealed the district court's grant of summary judgment. The Group alleged that nearby Roosevelt City ("City") diverted water from the Neola-Whiterocks Aquifer ("Aquifer"), which lowered the surrounding water table and soil saturation levels. The Group claimed that this caused higher irrigation costs and impairment of their ability to raise crops and livestock.

In 1983, the City had purchased property including two wells and the associated water rights in the North Hayden area. Soon after, the City filed applications with the Utah State Engineer to change the point of diversion for two of its existing water rights to the location of the two wells. The City also deepened the two wells and drilled three additional wells, known collectively as the Hayden Well Field. Although the Group protested the applications and the drilling of the additional wells, the State Engineer granted the applications.

The Aquifer below the Hayden Well Field is an unconfined shallow aquifer. Unlike confined aquifers, where less permeable stone separates the water from the adjacent soil, unconfined aquifers draw water through the surrounding soil. Consequently, unconfined aquifers can cause a drop in the water table should water be extracted more quickly than replenished. Historical data indicated that since the creation of the Hayden Well Field, the water level had dropped dramatically. As a result, Group members were unable to irrigate their crops. The Group asserted that beneath the unconfined Aquifer laid a confined aquifer from which the City could extract its water without affecting the surrounding water table.