NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5531-08T2
A-5532-08T2

NOVA DEVELOPMENT GROUP, INC.,

Plaintiff-Appellant,

v.

J.J. FARBER-LOTTMAN CO., INC., SCOTT SWAN, AMERICAN SAFETY CASUALTY INSURANCE COMPANY and AMERICAN SAFETY INSURANCE SERVICES, INC.,

Defendants-Respondents.

J.J. FARBER-LOTTMAN CO., INC. and SCOTT SWAN,

Third-Party Plaintiffs-Appellants,

v.

AMERICAN SAFETY CASUALTY INSURANCE COMPANY and AMERICAN SAFETY INSURANCE SERVICES, INC.,

Third-Party Defendants-Respondents.

Argued December 9, 2009 - Remanded March 1, 2010
Telephonically reargued June 2, 2010 — Decided July 27, 2010

Before Judges Fisher and Sapp-Peterson.

On appeal from the Superior Court of New Jersey, Law Division, Bergen County, Docket No. L-5759-07.

Ronald Steinvurzel argued the cause for appellant Nova Development Group, Inc.

Frederick M. Klein argued the cause for respondents (A-5531-08T2) / appellants (A-5532-08T2) J.J. Farber-Lottman Co., Inc. and Scott Swan (The Sullivan Law Group, L.L.P., attorneys; Mr. Klein, of counsel and on the brief).

Susan P. Mahon argued the cause for respondents American Safety Casualty Insurance Company and American Safety Insurance Services, Inc. (Gartner & Bloom, P.C., attorneys; Ms. Mahon, on the brief).

PER CURIAM

In this insurance coverage appeal,[1] we remanded to the trial court to determine whether plaintiff was a multi-state location risk for which the notice provisions of N.J.A.C. 11:1-20.2(c) would therefore be inapplicable. N.J.A.C. 11:1-20.1(a). The regulation does not define "multi-state location risk." The motion judge concluded that plaintiff, a New Jersey corporation with offices only in New Jersey and who contracted for insurance in New Jersey, was not a multi-state location risk. We affirm.

American Safety Casualty Insurance Company and American Safety Insurance Services, Inc. (collectively referred to as

[1] These appeals originally calendared back-to-back are consolidated for purposes of opinion only.

"defendants"), were named as defendants in an action brought by Nova Development Group, Inc. (Nova), a New Jersey-based corporation, after defendants declined to provide coverage in connection with Nova's defense against a third-party action. The action, in which Nova sought third-party defense, arose out of a complaint brought by a Nova employee injured in a work-related accident that occurred while the employee was working on a Nova project in New York. Defendants refused to provide a defense on Nova's behalf because Nova's subcontract did not meet the definition of an "insured contract." Defendants were also named as third-party defendants in an action brought by insurance producer J.J. Farber-Lottman Co., Inc., an insurance brokerage firm, and one of its producers, Scott Swan (collectively referred to as "Swan/Lottman"), who were also named defendants in Nova's lawsuit. Swan/Lottman procured the insurance coverage with defendants for Nova.

In our original decision, we concluded that defendants had a non-delegable duty under N.J.A.C. 11:1-20.2(c) to provide Nova with a written copy of the exclusion endorsement that was included as part of the renewal policy issued to Nova prior to its employee's accident and that its purported notice to Nova of the exclusion "fell woefully short of that obligation." Nova Dev. Group, Inc. v. J.J. Farber-Lottman Co., Inc., No. A-5531-08

and No. A-5532-08 (App. Div. March 1, 2010) (slip op. at 11). Defendants, however, also argued that the notice requirements under the regulation did not apply because of the regulation's express provision exempting "multi-state location risks." Because the motion judge found the regulation inapplicable for other reasons, this issue was not addressed. We therefore remanded to afford the motion judge an opportunity to resolve this issue. Id. at 14.

Citing Seigel v. N.J. Dep't of Envtl. Prot., 395 N.J. Super. 604 (App. Div.), certif. denied, 193 N.J. 277 (2007), the motion judge first observed that statutory construction requires that regulations be construed "'in a manner that makes sense when read in the context of the entire regulation.'" Id. at 618 (quoting Medford Convalescent & Nursing Ctr. v. Div. of Med. Asst & Health Servs., 218 N.J. Super. 1, 5 (App. Div.), certif. denied, 102 N.J. 385 (1985)).

In that regard, the motion judge agreed, as Nova urged, that the purpose of the notice provisions under the regulations is to safeguard insureds against unfair and discriminatory changes in coverage to an insured. With this legislative purpose at the forefront, the motion judge reasoned that "[t]o adopt the interpretation espoused by [defendants] would severely limit the application of the regulation to very few New Jersey

companies, thereby negating the purpose underlying the emergency action taken by the DOBI [Department of Banking and Insurance] and the Governor and would disturb the overall goal, intent and spirit of the regulation." See Kievit v. Loyal Protective Life Ins. Co., 34 N.J. 475, 482 (1961).

The motion judge also noted that Nova was exclusively a New Jersey Corporation with no offices located outside of New Jersey's borders. Finally, the motion judge reiterated the well-established principle that insurance contracts are contracts of adhesion and should therefore be "'construed liberally in the [insured's] favor.'"

On appeal, defendants raise the following points for our consideration:

> POINT I
>
> N.J.A.C. 11:1-20 WAS ADOPTED TO CURB ABUSES BY INSURANCE COMPANIES.
>
> POINT II
>
> DELETION OF "WHICH DO NOT HAVE THEIR PRINCIPAL HEADQUARTERS IN THIS STATE" WAS INTENDED TO ELIMINATE CONFLICT OF LAW ISSUES.
>
> POINT III
>
> ASI'S OWN INSURANCE APPLICATION DOES NOT SUPPORT ASI'S INTERPRETATION OF THE REGULATION.

POINT IV

WHERE NOTICE IS INSUFFICIENT THE INSURED HAS THE RIGHT TO RELY ON ITS EARLIER POLICY.

We have carefully considered the arguments advanced and the applicable legal principles in light of the record and affirm substantially for the reasons expressed by the motion judge in her cogent and well-reasoned April 30, 2010 written opinion. We add the following brief comments.

In our original decision, we observed that a cogent argument could be made that deletion of the language, "which do not have their principal headquarters in the state" from the regulation was intended to exclude any corporation engaged in "multi-state location risks," including those corporations whose principal place of business is New Jersey. Nova, supra, at 13.

However, when the language is considered in the context of the public policy in this state, which is to afford New Jersey insureds protections against abuse by insurers, Lehrhoff v. Aetna Cas. & Sur. Co., 271 N.J. Super. 340, 347 (App. Div. 1994), we are convinced "multi-state location risks" does not apply to a New Jersey corporation, as is Nova, with its sole office location in New Jersey, irrespective of whether the performance of its operations may extend beyond New Jersey borders. To conclude otherwise would subject a New Jersey corporation to the very abuses the emergency adoption of

N.J.A.C. 11:1-20 in 1985 by DOBI sought to eliminate, "curb[ing] what the commissioner conceived as abuses by insurance companies . . . without adequate . . . notice to the insureds." In re N.J.A.C. 11:1-20, 208 N.J. Super. 182, 186 (App. Div. 1986).

Affirmed.