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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

Pigs Get Fat but Hogs Get Slaughtered … or a Vague Denial is No Insurer's Friend

By Anne M. Miller **March 23, 2026**

On February 24, 2026, the Court of Appeals, in *Maksym v Auto-Owners Insurance Company*, partially revived a Plaintiff's coverage denial suit against Auto-Owners Insurance Company, where Plaintiff had suffered a casualty loss resulting from a burst pipe. ___ Mich App __, __ (2026); slip op. 1. Breach of contract actions go to the terms of the contract and the allowances of the statute. However, when the terms are ill-defined, problems arise. Here, the issue appeared fairly straightforward: a statute of limitations argument whereby Plaintiffs failed to file suit in a timely manner. However, the issue turned on the vagueness of the denial of coverage letter sent by Defendant and the continuing course of conduct by Defendant after the letter was sent.

In this case, Plaintiffs – the homeowners – filed an insurance claim after a pipe broke in their second-floor bathroom, resulting in water accumulating under Plaintiffs' bathroom floor, breaking through the kitchen ceiling below, and damaging kitchen cabinetry. *Id.* Defendant approved coverage for "the water damage resulting from the leaking pipe" on August 18, 2022, and concurrently denied coverage for certain other expenses. *Id.* Those other expenses, for which coverage was denied in writing, included repairs and upgrades that Plaintiffs made to their home and plumbing system; however, Plaintiffs' policy only covered accidental direct damage caused by the leak, not repairs to the broken pipe or preventative upgrades. *Id.* Also at the same time, Defendant notified Plaintiffs that they were not entitled to additional living expenses because their home was not made unlivable by the leak. *Id.*, slip op. 2. In total, Defendant approved and paid a total of approximately $10,000.00 to compensate Plaintiffs for their claim. *Id.*

However, over six months following the burst pipe, Plaintiffs remodeled most of their home, including second-floor renovations in the bathroom such as a tile shower, recarpeting the stairs, refinishing the hardwood floors, hiring painting services, installing new kitchen appliances, upgrading the home's plumbing system, and more. *Id.* Then, in February 2023, Plaintiffs demanded additional coverage for these improvements and for additional living expenses – coverage to the tune of approximately $135,000, in addition to the $10,000 they had already

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To give Defendant some credit, here, this letter was sent in August 2022. There was no way for Defendant to know that Plaintiffs were going to renovate nearly their whole home and claim it as losses relating to the burst pipe. However, that makes it even more critical for denial of coverage letters to be specific as to what liability is covered and what liability is expressly denied. Further, to protect that denial, and preserve the statute of limitations, it is important that insurers not continue to seek proof of loss and documentation after the coverage decision has been made. If there are questions about whether some claim is part of the covered liability, it is better to seek documentation prior to deciding whether coverage applies and sending out a denial of coverage letter.

The Court of Appeals decision here is fairly clear that, had the insurer either been clearer about what coverage expressly was denied or not continued to seek documentation in support of the additional claims, the Court would not have concluded that a genuine issue of fact remained about the denial such that it was unclear whether the August 18, 2022, letter even was a denial or whether, if it was a denial, the insurer's subsequent actions revoked the denial before the Plaintiffs filed suit, tolling the statute of limitations.

received. *Id.* However, in making this additional demand, Plaintiffs failed to submit any documentation linking the demand to the covered loss; thus, Defendant rejected the additional proof of loss, giving Plaintiffs until June 12, 2023, to submit documentation and photographs, and again denied coverage for the upgraded plumbing. With this rejection, Defendant gave Plaintiffs an ultimatum: if documentation was not supplied, "coverage for [their claims] may be jeopardized." *Id.* When Plaintiffs failed to submit the requested documentation, Defendant notified Plaintiffs, in writing, that their claim was denied and agreed to an independent appraisal for only the damaged property where liability was acknowledged. *Id.*

Plaintiffs sued Auto-Owners Insurance Company for breach of contract, arguing that Defendant "acted in bad faith by refusing to participate in an appraisal because its decision to make partial payments to Plaintiffs was an admission that coverage applied." *Id.* Defendant argued that "[t]he issue of coverage had to be decided […] before an appraisal could be considered" and moved for summary disposition under a statute of limitations theory. *Id.* The trial court granted summary disposition for Defendant on the grounds that the limitations period expired on August 18, 2023, and suit was not filed until October 25, 2023, making it untimely, and that the August 18, 2022 denial letter was a denial of liability for all outstanding claims. *Id.* Plaintiffs appealed.

In a unanimous decision, the Court of Appeals affirmed in part and reversed in part. Relying on *Dep't of Environmental Quality v Gomez*, 318 Mich App 1, 21 (2016), Judge Thomas C. Cameron writing for the panel, reversed dismissal as to the denial of the claims, stating that "the [August 18, 2022] letter did not formally deny liability for Plaintiffs' other claims" such as "the second-floor bathroom or for other items beyond the kitchen area." *Maksym*, slip op. 4. Essentially, the letter sent by Defendant here was vague as to which claims, specifically, were denied because the additional areas were not expressly denied.

Moreover, the Court questioned whether the letter "was a formal denial" of the claims at all due to "Defendant's subsequent requests [for] documentation in support of [Plaintiffs'] claims related to the bathroom and other kitchen-related losses, which suggest the question of liability remained unresolved until Plaintiffs provided sufficient support for their claim." *Id.* Here, the Court is looking to both explicit language denying coverage and a matching course of conduct; however, when there is a mismatch between what is said – the denial letter – and the behavior thereafter – continuing to request documentation as to the loss – the Court has no choice but to construe against the drafter and find that the coverage issue was unresolved rather than being flatly denied. However, such a dispute creates a question of fact such that summary disposition is improper. Consequently, the Court held that "a question of fact exists about whether Defendant's denial of the second floor and other kitchen claims in the August 18, 2022 letter was equivocal or even revoked." *Id.*

Turning to Plaintiffs' claim regarding whether the trial court should have compelled a full appraisal, the Court of Appeals affirmed dismissal. Relying on the Court's decision in *Cantina Enterprises II Inc. v Prop-Owners Ins Co.*, 349 Mich App 682 (2024), the Court of Appeals held that Defendant "paid for specific damaged property that it determined were covered losses" and, as such, "did not make 'partial payments' for the disputed claims at issue. Rather, Defendant paid Plaintiffs for specific damages that it determined were covered under the policy while disputing liability for other claims." *Maksym*, slip op at 5-6. Here, the issue was not merely the total amount of money owed, but instead whether the remaining claims were a covered loss at all. As such, the Court held that Plaintiffs were not entitled to an appraisal on their remaining claims. The case was remanded to the trial court as to the coverage issues.

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