SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

Big Moose Operations, LLC, doing business as The Big Moose Inn, and BMI Enterprises, LLC v. United Frontier Mutual Insurance Company

2026 NY Slip Op 01644 · No. 53 CA 25-01162 · Decided March 20, 2026

SUMMARY

The New York Appellate Division, Fourth Department, modified an order in an insurance coverage dispute arising from a fire at plaintiffs' insured premises. The court held that plaintiffs were entitled to summary judgment on coverage under the policy's Ordinance and Law provision because the pollution exclusion was ambiguous as applied to asbestos and could not be used to defeat coverage. The order was otherwise affirmed, including the rulings concerning Building Inflation Protection and Refrigerated Foods coverage.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Montour, J.P.; Smith, J.; Greenwood, J.; Nowak, J.; Hannah, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
DECIDED	March 20, 2026
DOCKET	53 CA 25-01162
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs appealed and defendant cross-appealed from an order resolving competing motions for summary judgment in a breach-of-contract insurance action.
STANDARD OF REVIEW	De novo review of the parties' motions for summary judgment and interpretation of the insurance policy.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Big Moose Operations, LLC, doing business as The Big Moose Inn, BMI Enterprises, LLC v. United Frontier Mutual Insurance Company

TOPICS

insurance coverage · contract interpretation · breach of contract · appellate procedure · commercial litigation

PRACTICE AREAS

insurance coverage · insurance · breach of contract · commercial litigation · appellate procedure

QUESTIONS PRESENTED

1. Whether the policy's pollution exclusion unambiguously excluded coverage under the Ordinance and Law provision for demolition and debris-removal costs associated with asbestos.
2. Whether plaintiffs were entitled to summary judgment on their claim for coverage under the Ordinance and Law provision.
3. Whether defendant was entitled to summary judgment dismissing plaintiffs' Ordinance and Law claim.

HOLDINGS

1. The pollution exclusion was ambiguous with respect to asbestos because asbestos was not specifically included in the policy's definition of pollutant, and applying the exclusion to asbestos would render the policy's specific asbestos exclusion meaningless.
2. Plaintiffs were entitled to summary judgment on their claim for coverage under the Ordinance and Law provision because they established a covered loss resulting from demolition and debris removal required by state and local law.

KEY QUOTATIONS

> *"Whenever an insurer wishes to exclude certain coverage from its policy obligations, it must do so in clear and unmistakable language."* (*1)

> *"Inasmuch as the pollution exclusion is ambiguous with respect to asbestos, the exclusion must be interpreted in favor of the insured."* (*2)

FACTUAL BACKGROUND

Plaintiffs maintained an insurance policy with defendant covering their premises. After a fire, the town code enforcement officer directed plaintiffs to demolish the building and remove debris in accordance with state and local law, and plaintiffs incurred those costs. Defendant denied increased coverage and certain property-loss claims, including coverage under the policy's Ordinance and Law provision, asserting that the pollution exclusion applied because asbestos was present in the debris.

PROCEDURAL HISTORY

After a fire at the insured premises, defendant paid some policy benefits but denied claims under the Building Inflation Protection, Ordinance and Law, and Refrigerated Foods provisions. Plaintiffs sued for breach of contract and moved for summary judgment; defendant cross-moved for summary judgment dismissing the complaint. Supreme Court granted plaintiffs summary judgment on the Building Inflation Protection claim, granted defendant summary judgment on the Refrigerated Foods claim, and denied the parties' motions concerning the Ordinance and Law claim because of a factual question regarding asbestos and the pollution exclusion. The Appellate Division modified the order by granting plaintiffs summary judgment on the Ordinance and Law claim and affirmed as modified.

DISPOSITION

other

CASES CITED

- Pioneer Tower Owners Assn. v State Farm Fire & Cas. Co., 12 NY3d 302, 307 (2009)
- Selective Ins. Co. of Am. v County of Rensselaer, 26 NY3d 649, 655-656 (2016)
- Ewald v Erie Ins. Co. of New York, 214 AD3d 1382, 1385 (4th Dept 2023)
- Belt Painting Corp. v TIG Ins. Co., 100 NY2d 377, 384 (2003)
- Great Am. Restoration Servs., Inc. v Scottsdale Ins. Co., 78 AD3d 773, 777 (2d Dept 2010)