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**VICTORY FOR MOUND COTTON CLIENT IN SANDY CASE APPLYING WATER EXCLUSION  
ENDORSEMENT AND ANTI-CONCURRENT CAUSATION CLAUSE**

On April 7, 2016, New York Property Insurance Underwriting Association (“NYPIUA”) received a decision from the Supreme Court of Queens County granting summary judgment against plaintiff Jeffrey S. Gitter in a Storm Sandy dispute regarding the application of the policy’s water exclusion endorsement and anti-concurrent causation clause.

Plaintiff sued NYPIUA for allegedly breaching its contract of insurance by failing to pay the \$253,775 loss plaintiff purportedly suffered to his premises.

During Storm Sandy, plaintiff’s premises sustained extensive flood damage, an excluded peril, to the lower level of the house, which was largely displaced, and much less damage to the upper floor. Following Sandy, NYPIUA investigated the loss and concluded that the majority of the damage to plaintiff’s residence was caused by flood. NYPIUA issued payment to plaintiff for the limited damage caused by wind.

Plaintiff’s adjuster concluded that the purported damage was caused by a tidal surge, driven by wind, and stated that it was the “combination” of the two forces (storm surge and wind) that caused the damage to plaintiff’s premises.

NYPIUA convinced the Court that coverage for the damage alleged by plaintiff was precluded by the NYPIUA policy’s water exclusion endorsement. NYPIUA further argued that the NYPIUA policy’s anti-concurrent causation provision precluded coverage where, as here, the predominant cause of loss was an excluded peril. The Court agreed, siding with Mound Cotton’s arguments on behalf of NYPIUA.

The Court opined that “the parties’ dispute can be distilled to a single question: does the damage caused to Plaintiff’s property fall within the water damage exclusion of the Policy? It is clear, by the plain and unambiguous language of the policy, that the damage does fall within the exclusion.

“Ultimately, it is clear that even if wind was a contributing cause and/or the second floor damage was in some way ‘driven by wind,’ the exclusion still applies and thus bars Plaintiff from recovering under the Policy for the damage to his property,” wrote Justice Robert L. Nahman. “Defendants established that the loss was caused by storm surge when the lower level of plaintiff’s residence was struck with portions of the displaced concrete driveway and boardwalk. Thus, defendants proved that an excluded peril was the dominant and proximate cause of the water damage.”

NYPIUA was represented by Mound Cotton partner Costantino P. Suriano.