**Schoneboom v. Allstate N.J. Ins. Co., Docket No. A-1472-18T2 (App. Div. Mar. 19, 2020) (per curiam)**

In an unpublished decision, the New Jersey Appellate Division reversed summary judgment in favor of the defendant insurer and found coverage in favor of the insured under the sudden and accidental pollution provision. In 2006, the plaintiff insured bought property with a 550-gallon underground storage tank (UST) taking over the seller’s accidental release service plan. Plaintiff continued to purchase heating oil. In 2009, the UST was replaced and decommissioned. In 2010, the UST failed a tank evaluation test. When removed, it was discovered to have holes and to have been leaking, causing soil and groundwater contamination.

Plaintiff’s homeowner’s insurance policy included a “sudden and accidental” exception and oil tanks were excluded from coverage. The insurer rejected the insured’s claim absent investigation since the policy did not cover fuel tank leaks. Later, the insurer withdrew its denial and investigated the claim. The insured argued the groundwater contamination triggered coverage but the insurer denied coverage taking the position there was no “sudden and accidental” direct physical loss.

Plaintiff sued alleging, in part, breach of contract and bad faith. The trial court dismissed the complaint based upon the sudden and accidental pollution exclusion.

On appeal, the insured argued the trial judge failed to properly define “sudden and accidental” and that the “reasonable expectation” rule required coverage. The Appellate Division held the insurer was bound by the definition of “sudden and accidental” espoused in Morton Int'l, Inc. v. Gen. Accident Ins. Co., 134 N.J. 1 (1993) and that the insured was entitled to coverage under the “sudden and accidental” exception because the insurer never provided evidence that the insured failed to maintain the tank and there was no evidence the tank’s leak was not sudden at its inception, regardless of how long the leak continued thereafter.