

Flood Exclusion Upheld in Louisiana “Hurricane Katrina” Claims

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On August 2, 2007, in *In Re: Katrina Canal Breaches Litigation*, the Fifth Circuit Court of Appeals unanimously reversed a Louisiana U.S. District Court decision regarding the application of flood exclusion language.

The appellate court ruled that the applicable homeowner’s, renter’s and commercial property policies unambiguously excluded flood damage, regardless of whether the levee system in New Orleans was negligently designed, constructed or maintained. Nearly every major property carrier in Louisiana was involved in this litigation, including 13 carriers who used the standard ISO form.

In Re: Katrina Canal Breaches Litigation involved a group of Katrina-related cases, which were consolidated for pre-trial purposes in the U.S. District Court for the Eastern District of Louisiana. In November 2006, the U.S. District Court ruled in favor of certain policyholders, finding that the flood exclusions were too vague to be enforceable.

Specifically, the court noted that the word “flood” could have more than one meaning and that it has been subject to different interpretations. Judge Duval found that most of the definitions of “flood” imply the encroachment of water caused by an act of nature and did not include damages caused by human error. Accordingly, the court found the ISO exclusion at issue in most of the policies to be ambiguous. The court upheld the flood exclusions in the State Farm and Hartford policies, holding that those policies contained additional language, which removed the claimed ambiguity.

The Fifth Circuit Court of Appeals disagreed with the district court’s distinction between natural floods and floods caused by human error. The appellate court found that the flood exclusion was not ambiguous merely because it could have been worded more explicitly or because other policies had more explicitly defined the scope of the exclusion. The Fifth Circuit also stated that just because a term is not expressly defined within the policy does not make it legally ambiguous, noting that defining each term in a policy to prevent ambiguity would be “illogical and unworkable.” The court then found that the generally prevailing meaning of the term ‘flood’ “fits squarely” within the context of the event in New

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Orleans after Hurricane Katrina struck, concluding that "when a body of water overflows its normal boundaries and inundates an area of land that is normally dry, the event is a flood."

The Fifth Circuit also took issue with the policyholder's characterization of the flood as non-natural, noting that a focus on possible levee defects "ignores the sizable natural component to the disaster." The court reasoned that if the non-natural component is simply a failure to mitigate a disaster, then any natural event can be re-characterized as non-natural due to a failure of man's preventative measures.

Finally, the Fifth Circuit rejected the policyholder's argument regarding honoring the "reasonable expectations" of the insured, holding that reasonable expectations need not be ascertained when the policy language is unambiguous. Moreover, the court did not agree that expectations of coverage based on this endorsement would be reasonable given the plain language of the endorsement.

This decision is significant for all carriers utilizing the same or similar flood exclusions in that it undercuts efforts to create coverage for flood-related events by highlighting the role of other events or actions that took place in the chain of events during the flood, such as the failure of man-made structures. It is also significant in that it reflected a willingness, at least by this particular court, to uphold policy language in the face of strong public policy concerns arising from the plight of thousands of homeowners affected by Hurricane Katrina.

Should you have any questions about *In Re: Katrina Canal Breaches Litigation*, or about flood exclusion language in general, please feel free to contact any member of Plunkett Cooney's Insurance Practice Group. A practice group directory can be found on the Insurance Law Practice Group page, or call Insurance Practice Group Co-Leaders Chuck Browning at (248) 594-6247 or Ken Newa at (313) 983-4848.

For a complete of copy of *In Re: Katrina Canal Breaches Litigation*, [click here](#).