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WHAT DOES “FLOOD” REALLY MEAN?

The Louisiana Supreme Court recently ruled that the word “flood,” as used in an insurance policy issued by Lafayette Insurance Company, was not ambiguous, and therefore, coverage was excluded for damage caused by flooding from breaches in New Orleans’ area levees following Hurricane Katrina. *Sher v. Lafayette Ins. Co.*, et al, 07-2441 (La. 4/8/08).

In *Sher*, the plaintiff’s property was damaged by flood waters following Hurricane Katrina. Lafayette Insurance Company had issued to the plaintiff a commercial all-risk insurance policy which excluded any losses or damages caused directly or indirectly by a flood. However, the term “flood” was not defined in the policy. The plaintiff asserted that the insurance policy covered the water damages since the flood waters resulted from the breach of the levee system and not from the hurricane itself. He further alleged that the insurer’s denial of his claim was arbitrary and capricious, thereby entitling him to penalties.

The trial court granted the plaintiff’s motion for partial summary judgment, ruling that the flood exclusion was ambiguous and that the policy covered man-made events. The court of appeal affirmed. The Supreme Court, however, disagreed with this interpretation and noted that a “flood” is an “overflow of a body of water causing a large amount to cover an area that is usually dry.” This definition does not change or depend on whether the event is a natural disaster or a man-made one. Accordingly, the Court determined that the damage to the lower level of the plaintiff’s building was caused entirely by flood damage, which was excluded under the insurance policy.

The Court also addressed whether the post-Katrina amendment to Louisiana’s penalty statute, La. R.S. 22:658, which became effective on August 15, 2006, was retroactive. The amendment increased the penalty from twenty-five percent to fifty percent for an insurer who arbitrarily and capriciously fails to pay a claim within thirty days of receipt of satisfactory proof of loss or who fails to make a written offer to settle any property damage claims. The Court determined that because the amendment was “unquestionably substantive,” rather than procedural, it could not be applied retroactively to claims arising prior to August 15, 2006.

For more information or to determine how this decision may affect you or your company, please contact Jennifer C. Dyess, Breazeale, Sachse, and Wilson, L.L.P., (225) 381-8048, jcd@bswllp.com.



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