

Class Action Defense

[Case Study]

In Re: Katrina Canal Breaches Consolidated Litigation

On August 2, 2007, the U.S. Court of Appeals for the Fifth Circuit issued an important decision in the *In Re: Katrina Canal Breach Litigation* on one of the critical issues that has arisen in the massive insurance litigation filed by Louisiana residents in the wake of the devastating floods in and around New Orleans associated with Hurricane Katrina. Plaintiffs holding homeowner's insurance policies filed a class action lawsuit against numerous insurance companies, claiming that their "all risk" policies covered damage to their homes and property caused by the inundation of water into the City of New Orleans that resulted when the levees in and around New Orleans failed shortly after Hurricane Katrina made landfall.

The insurers moved to dismiss the claims for coverage on the ground that the exclusion in the plaintiffs' standard policies for damage caused in whole or part by "flood" unambiguously precluded coverage for the claimed water damage. The district court denied the insurers' motion to dismiss, finding that the term "flood" was ambiguous in the context alleged by plaintiffs — in particular, where it is alleged that the inundation of water onto the plaintiffs' property and into their homes was caused by human negligence in failing to properly construct and maintain the levees rather than wholly natural events.

In a meticulous and thorough opinion, the Fifth Circuit reversed the district court's ruling. The Fifth Circuit held that the plain meaning of the term "flood," which is commonly understood as a massive inundation of water onto normally dry land, encompassed the inundation of water into the City of New Orleans shortly after Hurricane Katrina made landfall. In other words, the Court held that a "flood" is a "flood," regardless of whether it is alleged that human negligence contributed to the flood, and that the insurers' exclusions for water damage, and specifically, for damages caused by "flood," unambiguously excluded coverage for the damage to plaintiffs' homes and property. The decision has been widely reported on in the press, as the insurers faced potential liability in the billions of dollars had the district court's decision not been reversed.

On August 6, 2007, insurers prevailed again in the Fifth Circuit in *Daryl Chauvin v. State Farm Fire & Casualty Co.*, another important insurance coverage dispute arising out of the flooding associated with Hurricane Katrina and Rita. In this case, various Louisiana homeowners filed a class action lawsuit against a number of insurers, claiming that their homes were totally destroyed in Hurricanes Katrina and Rita and that under Louisiana's Valued Policy Law, the insurers were obligated to pay for the full value of the insureds' homes even though the "total loss" resulted from flood (an excluded peril) and not a covered peril. The district court dismissed the insureds' claims, concluding that Louisiana's Valued Policy Law does not apply when a total loss does not result from a covered peril. The Fifth Circuit affirmed the dismissal, holding that in view of the purpose of Louisiana's Valued Policy Law (which was to fix the value of the insured property in the event of a total loss), it should not be construed to expand coverage and that instead the Valued Policy Law only requires an insurer to pay the agreed face value of the insured property if the property is rendered a total loss from a covered peril.

Prior results do not guarantee a similar outcome.