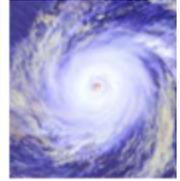




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KATRINA / RITA INSURANCE LAW NEWSBRIEF



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LOUISIANA FEDERAL COURT JUDGE ENTERS RULING FINDING WATER DAMAGE EXCLUSION AMBIGUOUS IN ISO-STANDARD FORM POLICIES

Late last Monday, November 27, Federal District Court Judge Stanwood Duval issued his ruling regarding dispositive motions pending in the *Vanderbrook*, *Chehardy*, *Xavier University*, and *Humphreys* cases pending in the Katrina Canal Breaches Consolidated Litigation in the Eastern District of Louisiana ([click here to view](#)). Judge Duval found that the term “flood” as used in the water damage exclusions in most standard form policies is “ambiguous” because it could reasonably be interpreted to refer to either naturally occurring floods or floods resulting from human negligence. Judge Duval looked at judicial opinions concerning earth movement exclusions and water damage caused by broken water mains to support his conclusion that man made floods are not included in the water damage exclusion.

Judge Duval acknowledged that the “lead in” language used in State Farm’s standard policies was sufficient to avoid the ambiguity because State Farm’s policies state the exclusion applies “regardless of the cause” of the water damage. Judge Duval also granted Hartford’s Rule 12 motion in the *Vanderbrook* case because Hartford’s policy contains a separate amendatory endorsement which excludes damage caused by third party negligence, including negligence in the “design, specifications, workmanship, repair, construction, renovation, remodeling, grading or compaction of all or any part of . . . levees, dams, or other facilities.”

Judge Duval’s Order is presented in separate parts, providing discrete sections to address the motions briefed in each of the four listed cases. Judge Duval certified his ruling to allow any of the parties adversely affected to petition the Fifth Circuit for interlocutory appeal. It is expected that applications for interlocutory appeal will be filed before the expiration of the 10 day deadline for such applications.

Observers on both sides of the hurricane insurance litigation in southern Louisiana are still watching for a ruling in a matter concerning many of the same issues which is pending before Judge Medley in the Civil District Court for the Parish of Orleans. Judge Medley heard oral argument on a motion for partial summary judgment several weeks ago in No. 06-4990, *Historic Restoration, Incorporated, et al. v. RSUI Indemnity Company, et al.*, in the Civil District Court for the Parish of Orleans, Div. 16, Sec. D. Judge Medley’s decision and order could be issued at any time.

We will follow both of these matters and issue a more comprehensive supplemental newsbrief discussing both orders after Judge Medley’s decision is released.

EDITORS’ NOTE

The Hurricane Insurance Newsbrief Editors are happy to announce that the 2006 Atlantic Hurricane season ended yesterday (November 30) and that this year’s season was remarkably quiet, especially when compared to the record season of 2005. Although pre-season forecasters had predicted another extremely active season, there was thankfully very little activity this year. CNN.com summarized the 2006 season as follows:

- 9 named storms, 5 hurricanes in 2006
- No U.S. hurricane landfall for first time since 2001
- 2006 quiet after 2004, 2005, but still at historical average
- El Nino helped prevent storms.

The full story of the past season can be found at:

<http://www.cnn.com/SPECIALS/2006/hurricanes/>

We will continue to monitor storm-related insurance litigation issues from the major hurricanes of the 2005 season and keep our readers up to date on significant developments.

If you wish to discuss legal principles mentioned herein, reply to this e-mail or contact any of our lawyers at Martin, Disiere, Jefferson & Wisdom, L.L.P.
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