

THOUGHT LEADERSHIP

News

TEXAS SUPREME COURT AGREES TO HEAR HURRICANE IKE CONCURRENT CAUSATION CASE

Newsbrief

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Last Friday, the Texas Supreme Court agreed to hear oral arguments in *JAW The Pointe, LLC v. Lexington Insurance Co.*, Dkt 13-0711 on January 13, 2015. The case concerns an apartment complex in Galveston that was severely damaged by Hurricane Ike. Lexington Insurance Company had issued a \$25 million property policy on it and other properties. The City of Galveston condemned the property, but Lexington refused to provide coverage for the demolition and rebuilding costs. The policy was subsequently exhausted by payments on other claims. JAW filed suit and recovered a jury verdict against Lexington for \$1.2 million in compensatory damages and \$2.5 million for knowing conduct. The Court of Appeals reversed the judgment on the concurrent causation doctrine because the City's condemnation order resulted from a covered peril (wind damage) and a non-covered peril (flood damage.)

"This case presents an issue of significance to Texas insurance law," JAW said in its petition for review. "When there are covered and non-covered perils that may have combined to cause a loss, what burden should fairly be placed upon the insured to prove the amount of the covered loss?" JAW contends the ruling of the Court of Appeals requires the City to differentiate between covered and uncovered perils, rather than allowing the Plaintiff to present evidence on concurrent causation.

[**Editor's Note:** We will continue to monitor this important case and will report on any further developments.]