

THOUGHT LEADERSHIP

News

## HOUSTON COURT OF APPEALS GRANTS SUMMARY JUDGMENT FOR INSURER IN SEWAGE-OVERFLOW CASE

Newsbrief

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Last week, the Fourteenth Court of Appeals affirmed summary judgment in favor of United Fire and Casualty Company in a case involving damage from a sewage overflow. In *Kelley Street Associates, LLC v. United Fire and Cas. Co.*, No. 14-14-00755-CV, 2015 WL 7740450 (Tex. App.—Houston[14th Dist.] Nov. 30, 2015), Kelley reported a claim for flood damage after employees of the City of Houston repaired a water meter and street valves, which caused Kelly's building to flood. Kelley alleged that these employees dislodged debris that then traveled through the water main, entered the building, and damaged flush valves in the building's toilets, which caused septic tanks to fill and flood the building through the floor drains.

United Fire denied the claim based on an exclusion for loss caused by “[w]ater that backs up or overflows from a sewer, drain, sump pump or related equipment.” On summary judgment, Kelley argued that the exclusion only applies when a municipal sewer system overflows, but not when the flooding is caused by the failure of the insured's plumbing system. Kelly also argued that the exclusion's term “drain” did not include floor drains, from which the water overflowed in this case.

The trial and appellate courts rejected Kelley's interpretation of the exclusion. The Fourteenth Court of Appeals noted that the exclusion focused on the type of water-related loss, not where the loss originated. The court also looked to other policy provisions that *did* differentiate between loss that originated from outside or inside the insured's property, finding that the parties were capable of including similar language in the sewage-overflow exclusion and that the omission of this language in this exclusion “was purposeful.”

The Court of Appeals also rejected Kelley's argument that the term “drain” did not include floor drains. The Court looked to the common definition of “drain” as a “conduit for draining liquid, as a ditch or a pipe,” and found that the policy unambiguously excluded flooding from floor drains. Finding the policy exclusion unambiguous, the Court affirmed the trial court's granting of summary judgment in favor of United Fire.