

THOUGHT LEADERSHIP

News

FIFTH CIRCUIT AGREES WITH INSURER'S CALCULATION COMMERCIAL PROPERTY WINDSTORM DEDUCTIBLE

Newsbrief

02 MAY 2016

In *Saratoga Resources, Inc. v. Lexington Insurance Company*, 2016 WL 1127399 (5th Cir. March 22, 2016), Lexington issued an insurance policy to Saratoga covering several oil and gas properties. Each property had a different insured value. When Hurricane Isaac made landfall in Louisiana and damaged several properties, Saratoga submitted a claim for \$3,085,047.39. Lexington's adjuster inspected the properties, and Lexington paid \$2,001,191.28, based on a calculation of the deductible being \$912,500. Saratoga disagreed, contending the deductible should be \$400,000. Lexington filed suit in the Southern District of Texas. Both parties filed cross motions for summary judgment. The district court granted Lexington's motion. Saratoga appealed.

The issue on appeal is how to correctly calculate the deductible. The relevant policy provisions provide:

Deductible: Each claim for loss or damage under this policy shall be subject to a per occurrence retention amount of \$125,000 unless a specific deductible shown below applies:

Earth Movement/Flood/Named Windstorm: 5% of Total Insurable Values at the time and place of the loss, subject to a minimum of \$250,000 any one occurrence.

If two or more deductible amounts apply to a single occurrence, the total to be deducted shall not exceed the largest deductible unless otherwise stated in the policy.

The parties agreed Hurricane Isaac was a "Named Windstorm." They agreed on the identity and insured values of the properties that were damaged. But they disagreed on how the deductible is calculated when more than one property was damaged.

Lexington argued the "plain language" of "5% of Total Insurable Values" sets the deductible at 5% of the aggregate sum of the insured values. This equaled \$912,500. Saratoga argued the policy required the calculation of "mini-deductibles" that represent 5% of the insured value of each property. Then when the \$250,000 minimum is reached, the "two or more deductible" clause prevents the total deductible from exceeding the highest "mini-deductible," which is \$400,000.

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The Fifth Circuit agreed with Lexington's interpretation. Texas law requires that terms be given their ordinary meaning unless the policy shows a technical or different sense was meant. The Court of Appeals held that Lexington's interpretation was reasonable and nothing in the policy indicated a more technical interpretation was meant. "The 'ordinary meaning' of '5% of Total Insurable Values' is 5% of the 'Total' of the 'Insurable Values' of the damaged properties – that is, 5% of the aggregate sum of the insured value of each damaged property."