

THOUGHT LEADERSHIP

News

## POLICYHOLDER'S BID TO REDEFINE "DOOR" AS "WALL" REJECTED

Newsbrief

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The Beaumont Court of Appeals recently affirmed a jury's finding of no coverage for wind-driven rain from Hurricane Ike which entered under a set of French doors and damaged a home's interior. In *Iler v. RVOS Farm Mutual Ins. Co.*, No. 09-16-00011-CV, 2017 WL 5486011 (Tex. App.—Beaumont Nov. 16, 2017) (slip op.), the homeowner's policy excluded "loss caused by windstorm, hurricane or hail... to the interior of a covered building... unless direct force of wind or hail makes an opening in a roof or wall." There was no evidence of any damage to the door or wall other than the loss of the door's weather stripping during the hurricane. RVOS denied the claim on the ground there was no wind-created opening. The Ilers asked the trial court to find as a matter of legal policy construction that any wind-created separation between a door and its frame or a window and its frame was an opening in a wall that would create coverage for the resulting loss. The court refused and the case was tried before a jury, resulting in a certain amount of "theater of the absurd" in the questioning of the witnesses, as both sides tried to establish through testimony whether a door or doorway is an opening in a wall.

The question of whether wind made an opening in the wall ultimately went to the jury, and the Ilers asked the court to instruct the jury that rain entering through a separation between a door and its frame is a covered loss. The court declined to do so and sent the question to the jury strictly on the policy language itself. The jury found no breach of contract. On appeal, the precise question was whether the Ilers' requested jury instruction should have been allowed, as the Ilers contended that the issue submitted was a question of law that should not have been determined by the trial court. The court disagreed noting that "while it is true that the jury should not be called upon to construe the legal effect of an instrument...the submission of a jury question is not error where the wording in the question does nothing more than present a question to the jurors based upon the facts." The underlying theme throughout the opinion is that a door is a door and a wall is a wall, and if the trial court declines to instruct the jury that a door is a wall, the appellate court is not going to disturb that decision. The trial court's judgment was affirmed.