

THOUGHT LEADERSHIP

News

LINGERING CLAIM FROM HURRICANE HARVEY WASHED AWAY BY FIFTH CIRCUIT

Newsbrief

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Last week, the Fifth Circuit affirmed a district court's summary judgment ruling holding an insurer's anti-stacking clause results in no recovery for commercial building owner. In *Pan Am Equities, Inc. v. Lexington Ins. Co.*, No. 1920363, 2020 WL 2709351 (5th Cir. May 26, 2020), the owner of two office buildings damaged by flooding from Hurricane Harvey sought a determination about which deductible was owed to its insurer to cover losses from the flood. The insurer's policy had an Anti-Stacking clause, so after analysis the largest applicable deductible would be owed. The "Flood" deductible was much smaller and would allow the owner to recover monetary funds while the "Windstorm" deductible was larger and would not. The district court held that the clear language of the "Windstorm" deductible controls, and the owner appealed.

The Fifth Circuit looked at the interplay of various provisions of the insurance contract. The Fifth Circuit found the "Windstorm" deductible applied to all "loss due to Windstorm" and the deductible was enlarged to include the policy's "Named Storm" provision. The "Named Storm" provision of the insurer's policy specifically contemplated flood damage. The owner tried to argue that since there was no wind damage from Hurricane Harvey the "Windstorm" deductible did not apply, meaning the "Named Storm" provision did not apply. However, the Court noted the policy's express inclusion of flood damage within the "Named Storm" provision compelled them to hold "loss due to Windstorm" broadly included all loss or damage including "Flood" arising out of a "Named Storm." Additionally, since this policy had an Anti-Stacking clause, even if both the "Named Storm" and "Flood" provisions both applied, the owner would still be stuck owing the higher deductible and receive nothing. The Court affirmed the district court's summary judgment in favor of the insurer, holding "Flood" damage caused by a "Named Storm" did fall under the higher "Windstorm" deductible section.