

## Trial Court Decides Important Katrina-Related Insurance Issue



**Jay Rosenquest**   **Cove Geary**

In December, 2006, U. S. District Judge Stanwood Duval of the Eastern District Court of Louisiana held that most of the homeowner's and commercial property insurance policies applicable in metropolitan New Orleans contain flood exclusions that are ambiguous and unenforceable with respect to breaches of the levees or other inundations of water caused by human error or negligence. The court addressed the issue in ruling on motions to dismiss and motions for summary judgment filed by defendant insurance companies in the plethora of cases consolidated for pretrial purposes in *In re Katrina Canal Breaches Consolidated Litigation*. In an eighty-five page opinion, the court examined the different policy language used by the insurers, and concluded that most of the flood exclusions were susceptible to two reasonable interpretations – one that a "flood" is limited to a natural occurrence in which water overflows its normal bounds, and another that a "flood" is not only such a natural occurrence, but also an inundation of water caused by human error or negligence. The court held that because the exclusions were susceptible to multiple interpretations, they were ambiguous, and must be narrowly construed to exclude from coverage only inundations of water that are naturally caused. The court ruled that as a matter of law, property damages caused by the negligent design, construction, or maintenance of the 17th Street Canal, the Industrial Canal, and the Mississippi River Gulf Outlet, are insured losses and not excluded under those policies, as a reasonable insurance consumer would not expect losses caused by human error or negligence to be excluded.

The court found that some policies, such as those issued by Hartford, contained language that expressly excluded losses caused by the "design, . . . repair, [or] construction . . . of levees," and that those policies clearly excluded damages caused by the levee breaches during Katrina. The court also found that there were reasonable grounds for differences of opinion on the interpretation of the policies and recognized the impact the opinion could have on affected individuals and upon the insurance industry. For those reasons, the court certified the decision for an immediate appeal to the United States Court of Appeal for the Fifth Circuit. A number of insurers have already indicated that they intend to take this appeal.

For a copy of the full opinion and additional information about this litigation, contact [Jay Rosenquest](#) or [Cove Geary](#).