

ALERT

Hurricane Damage Claim Barred by Property Damage Exclusion

January 18, 2013

The United States District Court for the Southern District of Florida has held that an insurer did not owe a duty to defend a lawsuit by a homeowner against a condominium association because all of the claims arose out of hurricane damage and thus fell under the property damage exclusion contained in a non-profit management and organization liability policy. *Commodore Plaza Condo. Ass'n, Inc. v. QBE Ins. Corp.*, 2013 WL 150612 (S.D. Fla. Jan. 14, 2013).

A townhome owner had sued the insured condominium association, alleging that after Hurricane Wilma damaged portions of the owner's property, the association caused additional damages when it sent in workers and failed to keep the townhome clean and sanitary. The complaint alleged that the insured association had caused damage by dropping debris inside the house, inadequately exterminating rodents from the property, incorrectly installing roof tarps, and failing to provide adequate security. Additionally, the owner claimed that the association had violated a number of state statutes when it failed to obtain proper work permits and improperly removed asbestos-containing materials. The condominium association sought coverage for the suit under its non-profit management and organization liability policy, and the insurer denied coverage on the basis of the policy's property damage exclusion. The association then filed a breach of contract action against the insurer.

In the coverage litigation, the court granted summary judgment in favor of the insurer on the basis of the property damage exclusion, finding that all of the actions complained of flowed from the property damage caused by Hurricane Wilma. Specifically, the policy excluded from coverage claims "for or arising out of any damage, destruction, loss of use or deterioration of any tangible property." The association

Practice Areas

- D&O and Financial Institution Liability
- E&O for Lawyers, Accountants and Other Professionals
- Insurance
- Professional Liability Defense

argued that only part of the complaint arose from the hurricane damage since the statutory violations depended solely on whether the violations had occurred and not the reason the work was commenced. The court rejected this argument, explaining that the broad meaning of the term “arising out of” requires only some causal connection between the conduct and the injury, not proximate causation. The court reasoned that there would have been no need to send in repair workers, follow Florida statutory requirements, or keep the townhome clean and sanitary had there been no damage from the hurricane. Because the basis of the policy exclusion—property damage—was also the basis from which all of the owner’s claims arose, the court found that the insurer properly denied coverage and was entitled to summary judgment.

The opinion is available [here](#).