

Fourth District Holds That "Ensuing Loss" Provision In All Risk Policy Is Unambiguous

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In a recent decision, the Fourth District Court of Appeal sided with the insurer in holding that the ensuing loss provision in an all risk policy was unambiguous. *Certain Interested Underwriters at Lloyd's, London Subscribing To Policy Number M12226 v. Chabad Lubavitch Of Greater Ft. Lauderdale, Inc.*, No. 4D10-762 (Fla. 4th DCA June 8, 2011) (slip).

Specifically, the ensuing loss provision at issue provided that, if the excluded cause "results in a cause of loss . . . , and that resulting cause of loss is a Covered Cause of Loss, we will pay for the loss or damage caused by such Covered Cause of Loss."

The trial court ruled the provision is ambiguous, and construed it against the insurer. The Fourth District disagreed, holding that the ensuing loss provision is unambiguous and that "the plain language of the 'Ensuing Loss' provision means that if [an excluded cause] sets in motion another cause, which is not excluded by the policy, and that intervening cause results in a covered loss, the windstorm exception does not apply and the loss would be covered by the policy." The Fourth District remanded for the trial court to determine the direct cause of the damage at issue.

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