

Wiley Rein Files *Amici Curiae* Brief on Behalf of Major U.S. Insurance Trade Groups in Crucial Hurricane Katrina Appeal

April 4, 2007

Wiley Rein LLP, representing the country's leading insurance industry trade groups, has filed an *amici curiae* brief in the United States Court of Appeals for the Fifth Circuit in the crucial appeal addressing the application of water damage exclusions to the levee breaches resulting in the inundation of New Orleans following Hurricane Katrina.

The filing-on behalf of the American Insurance Association, National Association of Mutual Insurance Companies, Property Casualty Insurers Association of America and Reinsurance Association of America-challenges the lower court's decision on several fronts. The brief demonstrates that the plain terms of the water damage exclusions bar insurance coverage for all losses resulting from a flood, regardless of the cause of the flood, and shows that the National Flood Insurance Program (NFIP) provides the relevant context for interpretation of the private homeowners' policies at issue. The history, purpose and scope of the NFIP make clear that flood coverage is provided by the NFIP, not the homeowners' policies before the Court. Finally, the brief explains the importance of contract certainty to the insurance system, which depends on the even-handed application of policy terms. Here, the lower court's erroneous expansion of coverage to encompass certain flood losses was both huge and unanticipated. Unless reversed, it could severely distort insurance system, adversely affecting both the price and availability of insurance for millions of Americans.

Practice Areas

- General Liability
- Insurance
- Insurance Appellate
- Issues and Appeals
- Litigation
- Property Coverage

Citing experts who warn that flood risk is unpredictable and that shoehorning it into homeowners' policies could result in significantly increased premiums or a decision to forgo continuing to take part in a particular market, the brief argues that these public policy considerations reinforce the importance of enforcing the water damage exclusion in this appeal.

Wiley Rein LLP partner Laura Foggan, a member of the firm's Insurance Practice and co-chair of the Appellate Practice, had principal responsibility for this brief and was assisted on the case by associate Benjamin Theisman.

[View brief.](#)