

Winston Thwarts Plaintiff's Attempt to Obtain "Wind"-fall

JULY 12, 2016

Winston earned a major victory on July 12, 2016, for Factory Mutual Insurance Company (FM Global) when the Southern District of New York granted summary judgment in a case with hundreds of millions of dollars at stake.

Client FM Global insured plaintiff 4 NYP Ventures LLC (4 NYP) under an all-risk property insurance policy. Since the property was in a flood-prone location, the parties agreed to a \$20 million limit on losses related to "flood" damage. Under the policy, flood is defined to include "physical loss or damage from flood associated with a storm or weather disturbance whether or not identified by name by the U.S. National Hurricane Center or any other meteorological authority." 4 NYP incurred flood damage in connection with Superstorm Sandy and submitted a claim for the full \$20 million flood limit, which FM Global promptly paid. Months later, 4 NYP claimed that it could also collect under a separate "Named Storm" provision in the Policy for up to the full policy limit of \$500 million.

FM Global moved for summary judgment that the \$20 million flood limit applied and that FM Global had satisfied its policy obligations to 4 NYP. The Policy defines "Named Storm" as "wind and/or flood" damage, when that damage is related to a storm named by a meteorological authority. The Court held that since 4 NYP has never claimed any "wind" damages, its claim for "Named Storm" damages by definition "collapses into simply a claim for 'flood' damages." The Court held that there was no independent "Named Storm" coverage and that the \$20 million flood sublimit applied and was the "maximum amount payable" for all losses and damages. The Court reasoned, "4 NYP's interpretation of the FM Policy...is pure fantasy: it requires ignoring language that is in the FM Policy and adding language that is not."

The FM Global team consisted of New York-based Partners Harvey Kurzweil, Kelly Librera, and George Mastoris.

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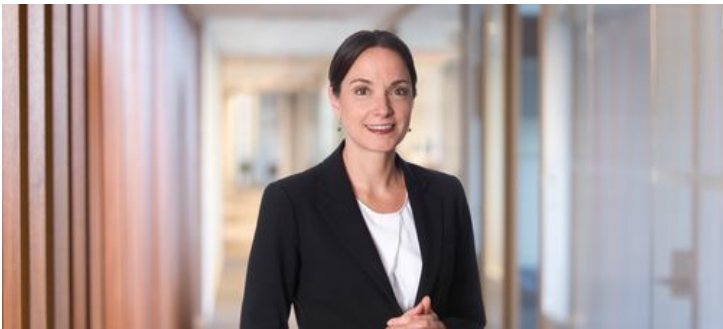
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