

## Hurricane Katrina

Since its inception, Zelle has been at the forefront of representing insurers in their most complicated and important claims involving natural disasters. And when Hurricane Katrina hit the Gulf Coast, it was no different. Zelle attorneys represented numerous clients in claims involving a variety of business sectors, including:

- Hotels
- Hospitals
- Airlines
- Major Media Companies
- Casinos
- Chemical, Petrochemical and Refining
- Defense Contractors
- Universities
- Retail Businesses
- Retirement Homes
- Commercial Housing
- Manufacturing

The issues in these claims were equally diverse:

- Civil Authority/Ingress - Egress
- Wind v. Flood
- Number of Occurrences
- Business Interruption Valuation
- Choice of Law
- Pre-Existing Damage
- Coverage for Unscheduled Locations

- E-discovery
- Demolition & Increased Cost of Construction
- Property Damage Valuation – (Replacement Cost & Actual Cash Value)
- Application of Named Storm Limits & Deductibles
- Priority of Payments, Drop Down and Attachment of Excess Coverage
- Utility Service Interruption
- Cost of Code Compliance

Zelle represented clients who faced numerous major hurricane claims. Consistent analysis, judgment and response across multiple claims helped to assure credibility of the client and eliminated the need to reinvent the wheel on each claim. While Zelle attorneys were able to assist their clients in resolving many of these claims pre-suit as part of the adjustment or through appraisal, mediation or arbitration, others required litigation.

Some of the more notable cases handled by Zelle attorneys include:

***Allianz Global Risks US v. The Administrators of the Tulane Educational Fund***, litigated in the U.S. District Court for the Eastern District of Louisiana, CV-06-1732. Zelle defended Allianz Global Risks against a claim by Tulane University arising out of Hurricane Katrina. Zelle filed a declaratory judgment action in Federal Court in Louisiana asking the court to interpret the flood exclusion in the policy. Tulane University claimed in excess of \$500 million for property damage and business interruption losses as a result of wind and flood damage caused by Hurricane Katrina.

***Board of Commissioners of the Port of New Orleans v. Factory Mutual Insurance Company***, litigated in the U.S. District Court for the Eastern District of Louisiana, CV-06-8101. Factory Mutual insured the Port of New Orleans' approximate 22-miles of river-front property in New Orleans, including the Port's many warehouses and other buildings leased to commercial tenants. The Port sought damages in excess of \$250 million related to property damaged by wind, flood, fire, and vandalism during and after Hurricane Katrina. The many issues in dispute included claims for pre-existing damage, code-upgrade demands, paint-matching, demands for full replacement of

buildings and walls where there was only minor wind-damage, claims for business income losses where the policy only insured “debris-removal”, claims for lost rental-income when the lease required the tenant to continue to pay, despite property damage, and, most significantly, claims for a number of buildings that were pre-existing, but not scheduled insured property under the policy.

***Northrop Grumman Corp. v. Factory Mutual Insurance Company***, pending in the U.S. District Court for the Central District of California, CV-05-8444. Flood and wind from Hurricane Katrina damaged Northrop’s shipyards located in Pascagoula, Mississippi and Avalon, Louisiana. The majority of damage that Northrop sustained was storm surge flooding. Northrop filed suit against Factory Mutual in California just 60 days after the loss seeking damages in excess of \$1.2 billion and contending, in part, that the flood exclusion in Factory Mutual’s excess policy was unenforceable.

The case was split into two phases. Phase I addressed contract interpretation and is now concluded. The Ninth Circuit found as a matter of law “that the Flood Exclusion unambiguously bars coverage for the water damage to Northrop’s shipyards under the excess policy.” 563 F.3d 777 (9th Cir. 2009). The District Court subsequently granted FM’s Motion for Summary Judgment declaring that the Flood Exclusion in FM’s excess policy is enforceable, notwithstanding California’s efficient proximate cause doctrine.

Phase II is to address the measurement of Northrop’s remaining non-Flood claim. At the outset of Phase II, the District Court granted FM’s Motion for Partial Summary Judgment dismissing all “bad faith” and extracontractual claims. The parties are conducting Phase II discovery with an expected trial setting in early 2013.

These cases are just examples taken from the many hurricane matters in which Zelle has represented clients. We invite you to talk to us about how we can help you manage consistency and efficiency in situations involving multiple major claims.