Fifth Circuit Court of Appeal
State of Louisiana

No. 25-C-503

DIANA AND HENRY OGDEN, LLC
VERSUS
PROGRESSIVE PROPERTY INSURANCE COMPANY

IN RE PROGRESSIVE PROPERTY INSURANCE COMPANY
APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE MICHAEL P. MENTZ, DIVISION "F", NUMBER 843-074

December 19, 2025

Panel composed of Judges Jude G. Gravois,
Stephen J. Windhorst, and Scott U. Schlegel

WRIT GRANTED

Defendant, Progressive Property Insurance Company, seeks review of the trial court's September 24, 2025 judgment, which denied its motion for partial summary judgment. For reasons stated more fully below, we grant Progressive's writ application and grant its motion for partial summary judgment.

This matter involves a claim on a condominium owner's insurance policy that Progressive issued to plaintiff, Diana and Henry Ogden, LLC. The policy insured the "alterations, appliances, fixtures and improvements" in plaintiff's condominium (Unit 320) in the Metairie Towers Condominium Complex.[1] The claim arose after plaintiff's condominium suffered damages during Hurricane Ida on August 29, 2021. Progressive adjusted the damages to plaintiff's condominium

[1] The Metairie Towers Condominium Association secured a separate policy covering the common elements of the condominium complex.

at $7,366.97. Plaintiff hired its own adjuster, who estimated that the damages covered under the policy were $17,558.60.

On September 28, 2021, the condominium sustained additional damage as a result of a subsequent water event. According to plaintiff's petition, the Association's insurer prematurely directed insurance inspectors/adjustors to recharge/reopen the condominium complex's "water piping systems." Plaintiff alleged that this resulted in the uncontrolled release of a large quantity of water inside and outside of the complex walls, and caused significant water damage to the entire complex, including plaintiff's condominium. Plaintiff alleged that its condominium was a total loss as a result of the two events and it was unable to resume occupancy of the unit. Plaintiff contends that it submitted a claim to recover the policy limits for the total loss to its condominium, but Progressive refused to pay the claim. According to the parties, the Association eventually gutted the entire complex and sold the property to a third party.

Plaintiff's condominium policy states, in pertinent part:

> **SECTION I - PROPERTY COVERAGES**
> **COVERAGE A - DWELLING**
> **Covered Property**
>
> We cover:
>
> **1.** The alterations, appliances, fixtures and improvements which are part of the building on the "residence premises", used mainly as your private residence, shown on the Declarations, including structures owned solely by you, other than the "residence premises", located on the "residence premises";
>
> **2.** Items of real property which pertain exclusively to the "residence premises"; or
>
> **3.** Property, which is your insurance responsibility under a corporation or association of property owners agreement.
>
> ***

SECTION I - PERILS INSURED AGAINST
COVERAGE A – DWELLING

We insure against risk of sudden and accidental direct physical loss to property described in Coverage A.

"Residence premises" is defined in the policy as "the unit where you reside and which is shown as the 'residence premises' on the Declarations. (Emphasis added.)

The policy also has an endorsement entitled "Limited Water Damage Coverage," which provides that the "total limit of liability for water damage to covered property is $10,000 per policy term." The endorsement further explains that the "limit applies to direct physical damage caused by sudden and accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance." The policy limits include: 1) Coverage A Dwelling - $172,000.00; 2) Coverage C Personal Property - $5,000.00; and 3) Coverage D Loss of Use - $35,400.00.

On July 21, 2025, Progressive filed a motion for partial summary judgment seeking a ruling in its favor finding:

1) The condo unit #320 was not rendered a total loss as a result of the direct physical damages sustained during Hurricane Ida; and

2) The policy limit for the September 28, 2021 water loss event is a total of $10,000.00.

In support of its motion, Progressive argued that the condominium was not a total loss due to damages caused by Hurricane Ida. It asserted that the policy at issue only covered sudden and accidental direct physical losses to the condominium's betterments and improvements, and the damages caused by Hurricane Ida did not exceed the policy limits as demonstrated by plaintiff's own damage estimate. Progressive argued that any damages caused to plaintiff's condominium by the subsequent water event that occurred almost a month later are separate and distinct. Progressive further claimed that its liability for the

subsequent event is limited to $10,000.00 based on "Limited Water Damage Coverage" endorsement. Alternatively, Progressive requested that the trial court declare that it is entitled to a credit for the amount that plaintiff recovered from the Association for the sale of the condominium building and insurance proceeds distributed for payments on the Association's policies.

In response, plaintiff claimed that its condominium was a total loss because the Hurricane Ida damages were the proximate cause of the damages sustained following the subsequent water release that occurred on September 28, 2021. Plaintiff argued that the subsequent water event was part of the Hurricane Ida insurance inspections to the entire building and was not an independent event. It maintained that the subsequent water event was a foreseeable consequence of the hurricane damage assessment, and thus, the full policy limits should apply. Plaintiff further argued that it had no access to its condominium since Hurricane Ida. Thus, plaintiff asserted that it is entitled to the full policy limits under the Louisiana Valued Policy Law, La. R.S. 22:1318.

With respect to the "Limited Water Damage Coverage" endorsement, plaintiff argued that it did not apply because Hurricane Ida caused all of the damages. Thus, it argued that the endorsement conflicted with Louisiana law allowing for the recovery of full policy limits for a total loss. Plaintiff further argued that the endorsement did not apply because the damage was not caused by a sudden and accidental discharge, but by negligent actions during the claims adjustment process.

Following oral argument on September 22, 2025, the trial court denied Progressive's motion for partial summary judgment. The trial court did not provide specific findings but generally found that material issues of fact existed regarding the "losses associated with this matter," and further stated that Progressive was not entitled to summary judgment as a matter of law.

In its writ application, Progressive contends that the trial court erred by failing to find that 1) the betterments and improvements of the condominium were not rendered a total loss as a result of the direct physical damage sustained during Hurricane Ida; and 2) the trial court erred by failing to find that the policy limit for any damages arising from the September 28, 2021 water event is $10,000.00 per the Limited Water Damage Coverage endorsement.

The summary judgment procedure is favored and is designed to secure the just, speedy, and inexpensive determination of every action. La. C.C.P. art. 966(A)(2). A motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(A)(3). The burden of proof rests with the mover. La. C.C.P. art. 966 D(1). However, if the mover will not bear the burden of proof at trial on the issue before the trial court on the motion for summary judgment, the mover is not required to negate all essential elements of the plaintiff's claim, but is only required to point out the absence of factual support for one or more elements essential to the plaintiff's claim. *Id*. The burden then shifts to the plaintiff to produce factual support sufficient to show the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law. *Id*. Appellate courts review summary judgments *de novo* using the same criteria that govern the trial court's determination of whether summary judgment is appropriate. *Reed v. Landry*, 21-589 (La. App. 5 Cir. 6/3/22), 343 So.3d 874, 880.

This matter involves the interpretation of an insurance policy, which is a contract, and as such, is the law between the parties. *See Landry v. Progressive Sec. Ins. Co.*, 21-621 (La. 1/28/22), 347 So.3d 712, 717. The interpretation of an insurance policy usually involves a legal question which can be resolved properly in the framework of a motion for summary judgment. *Ledet v. FabianMartins*

Construction, LLC, 18-133 (La. App. 5 Cir. 10/17/18), 258 So.3d 1058, 1065. Further, an insurance policy must be construed employing the general rules of interpretation of contracts. *Supreme Servs. & Specialty Co. v. Sonny Greer, Inc.*, 06-1827 (La. 5/22/07), 958 So.2d 634, 638. If the insurance policy's language clearly expresses the parties' intent and does not violate a statute or public policy, the policy must be enforced as written. *Id*. However, if the insurance policy is susceptible to two or more reasonable interpretations, then it is considered ambiguous and must be liberally interpreted in favor of coverage. *Id*. Insurance policies should not be interpreted in an unreasonable or strained manner under the guise of contractual interpretation to enlarge or to restrict its provisions beyond what is reasonably contemplated by unambiguous terms or to achieve an absurd conclusion. *Ledet*, 258 So.3d at 1065.

While the insurer has the burden to prove policy limits or exclusion, it is the insured who bears the burden of proving the existence of the policy and coverage. *Mateu v. State Farm Mut. Auto Ins. Co.*, 08-1208 (La. App. 5 Cir. 4/28/09), 13 So.3d 196, 198. Insurance policies should be interpreted to effect, rather than to deny coverage. *Supreme Servs.*, 958 So.2d at 638. It is well-settled, however, that unless a statute or public policy dictates otherwise, "the insurers may limit liability and impose such reasonable conditions or limitations upon their insureds." *Id*. at 638-39. In these circumstances, unambiguous provisions limiting liability must be given effect. *Id*. at 639.

The plain language of the condominium policy at issue explains that for coverage to apply, there must be a "sudden and accidental direct physical loss." Damages resulting from an uncontrolled release of water from the building's plumbing system, allegedly caused by the negligence of individuals directed by another insurer, is not a direct physical loss of the hurricane damages sustained almost a month prior to the water release. The hurricane is at most an indirect or

remote cause of the damages to plaintiff's condominium. If we accepted plaintiff's proposed interpretation, then the insurer could be liable for any subsequent damage to the property following a hurricane, regardless of whether the cause was a covered event, until the property was repaired. Such an interpretation is unreasonable and would lead to absurd results.

In addition, there can be no dispute that the plain language of the Limited Water Damage Coverage endorsement limits coverage for the September 28, 2021 water event to $10,000.00, as this matter involves a discharge of water from plumbing. Further, if it is determined that the release was not accidental as plaintiff argues in the alternative, then there would be no coverage of the event.

Moreover, the cases plaintiff cites to in its brief do not support its position that all damages were a proximate cause of Hurricane Ida. In fact, the Louisiana Supreme Court's decision in *Lorio v. Aetna Ins.*, 232 So.2d 490 (La. 1970), supports Progressive's position that the damages caused by the subsequent water release are not a "direct physical loss" of the Hurricane Ida event. In *Lorio*, the Supreme Court affirmed the appellate court's finding that coverage did not exist under a windstorm policy for the subsequent death of a horse. *Id.* at 495. The plaintiff owned a quarter horse, which was insured under a windstorm policy. The horse died from overeating wheat stored in a feed stall adjacent to the stall where the horse was placed after a portion of the stable was destroyed by Hurricane Betsy. The plaintiff claimed that the horse's death was covered under the policy, which insured against *loss directly resulting from or made necessary by a windstorm*. The horse was initially placed in an open lot during the hurricane, and after the storm, it was moved to a stall next to the feed stall where a 100-pound bag of wheat was stored. Four days after the hurricane, the horse was found suffering, having kicked off two boards of the stall wall to access and eat the wheat, leading to its death in January 1966.

The Louisiana Supreme Court held that the death of the horse was not a direct result of or made necessary by the windstorm, as the evidence did not support a finding that the stall was structurally weakened by the hurricane. *Id.* at 494. The court further found that the windstorm was at most an indirect or remote cause of the horse's death, as the immediate cause was the horse's overeating of wheat. *Id*. at 495. The court concluded that the storm did not have a proximate relation to the horse's actions that led to its death, and the necessity to quarter the horse in the remaining part of the barn did not constitute a basis for attributing the loss to the storm. *Id.* at 494.

Plaintiff finally cites to *Hart v. North British & Mercantile Ins. Co.*, 162 So. 177 (La. 1935), which involved a fire that destroyed 75% of an apartment building. The insurance company refused to declare the property a total loss because the fire did not destroy the entire building. The insurance company further argued that the building was not rendered a total loss until the City of Shreveport later ordered the demolition of the remaining structure. The court rejected the insurer's arguments and determined that the building was a constructive total loss after the fire because the remaining 25% of the building was worthless. The *Hart* case is distinguishable from the present matter because plaintiff has not argued, nor has it submitted any evidence to establish that the damages directly caused by Hurricane Ida, as opposed to subsequent events, would have required the demolition of the entire condominium complex.[2]

Following *de novo* review, we find that plaintiff failed to meet its burden to establish that its condominium was a total loss as a result of damages caused by

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[2] Plaintiff also cites to *Sher v. Lafayette Ins Co.*, 07-2441, 07-2443 (La. 4/8/08), 988 So.2d 186, for the proposition that if the initial cause is covered, then subsequent damage, such as mold, should also be covered. However, the *Sher* court did not address or discuss this issue. Regardless, the argument is distinguishable from the present matter because mold is a natural and foreseeable consequence of water damage. A water release from plumbing over a month after a hurricane is not a natural and foreseeable consequence.

Hurricane Ida. We further find that Progressive met its burden to establish that the policy limit in the "Limited Water Damage Coverage" endorsement applies to the September 28, 2021 water event. Accordingly, we grant Progressive Property Insurance Company's writ application and reverse the trial court's September 24, 2025 judgment denying Progressive's motion for partial summary judgment. We further grant Progressive's motion for partial summary judgment and find that: 1) plaintiff Diana and Henry Ogden, LLC's condominium insured by Progressive was not rendered a total loss as a result of the direct physical damages sustained during Hurricane Ida; and 2) the policy limit for the September 28, 2021 water event is $10,000.00 pursuant to the "Limited Water Damage Coverage" endorsement.

Gretna, Louisiana, this 19th day of December, 2025.

SUS
JGG
SJW

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CURTIS B. PURSELL
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25-C-503

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24th Judicial District Court (Clerk)
Honorable Michael P. Mentz (DISTRICT JUDGE)
J. Douglas Sunseri (Respondent)
Jason P. Foote (Relator)

MAILED

Devin Caboni-Quinn (Relator)
Kaleigh K. Rooney (Relator)
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Metairie, LA 70002

Kathryn A. E. Sunseri (Respondent)
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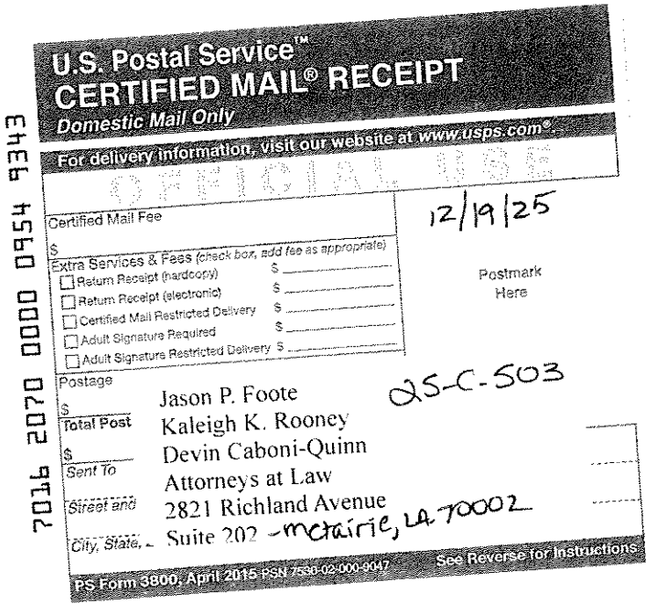
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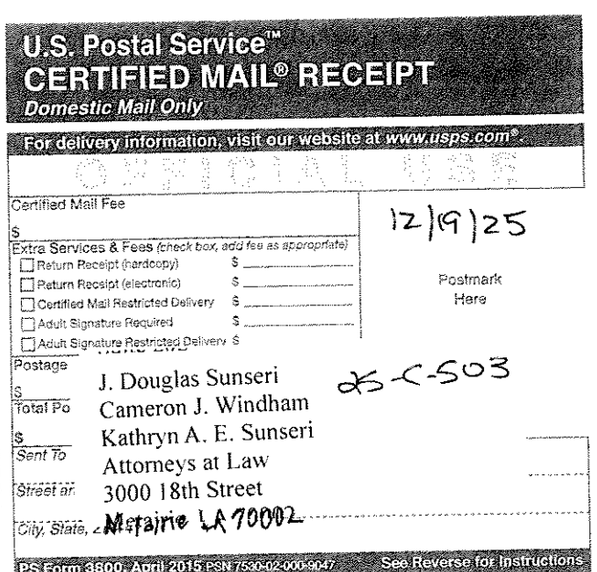
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Kathryn A. E. Sunseri
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3000 18th Street
Metairie, LA 70002

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