

**DR. DONALD GANIER, JR., ET
AL.**

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NO. 2007-CA-1374

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**SPECIALTY RISK
ASSOCIATES, INC., ET AL.**

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STATE OF LOUISIANA

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MCKAY, J., DISSENTS WITH REASONS

I respectfully dissent from the majority's decision to affirm the trial court's granting of the defendant's motion for summary judgment. The insurance policy at issue is both ambiguous and conflicting when it comes to coverage for damages caused by wind driven water. It is well established that "the ambiguous provision is to be construed against the insurer who issued the policy and in favor of the insured." Hill v. Shelter Mut. Ins. Co, 05-1783 (La. 7/10/06), 935 So.2d 691. This creates a genuine issue of material fact and makes summary judgment inappropriate in this situation.