

LYKETTA ALEXIS, ET AL.

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NO. 2000-CA-1124

VERSUS

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COURT OF APPEAL

**SOUTHWOOD LIMITED
PARTNERSHIP, ET AL.**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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McKAY, J. CONCURS IN PART AND DISSENTS IN PART

I concur with the majority's opinion that the trial court's granting of summary judgment to Sphere Drake was improper. However, I respectfully dissent from the majority opinion in so far as it affirms the trial court's granting of summary judgment in favor of First Financial.

The damage in the instant case was allegedly caused by "raw sewage and sewage contaminated soil." The exclusion clause does not give an all-inclusive definition of waste but states that waste includes "materials to be recycled, reconditioned, or reclaimed." Whether both raw sewage and sewage contaminated soil are classified as waste under this clause is unclear. Accordingly, whether First Financial's policy provides coverage, a duty to defend, or a duty to indemnify will depend on factual findings to be made by

the trier of fact. Therefore, I believe summary judgment in favor of First Financial was improper.