

**KIMPTON HOTEL &
RESTAURANT GROUP, INC.
AND FIRST ORLEANS HOTEL
ASSOCIATES, L.P.**

VERSUS

**LIBERTY MUTUAL FIRE
INSURANCE COMPANY**

* **NO. 2007-CA-1209**
* **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

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BELSOME, J., CONCURS IN THE RESULT WITH REASONS.

I concur with result of the majority opinion but not with its analysis. More specifically, I disagree that a clear unambiguous reading of the policy provides for \$10 million dollars of flood coverage for Hotel Monaco and Cobalt Restaurant. It is undisputable that endorsement RM1109 makes a distinction between “[a]ny covered property situated in zone B or X shaded as defined in item 4.(B) of this endorsement” and “New Orleans Hotel Monaco and Cobalt Restaurant” setting forth flood damage liability coverage at \$10 million and \$2.5 million respectively.

However, a reading of endorsement RM1132 under the Flood Zone Designation Schedule, which is identified as modifying RM1109, specifically lists Hotel Monaco and Cobalt Restaurant as a location that falls into the category of property situated in zone B or X. I find that endorsements RM1109 and RM1132 create two equally reasonable interpretations of what limit of liability for flood applies to Hotel Monaco and Cobalt Restaurant. Accordingly I find the policy language to be ambiguous. *See Elmer v. Washington Nat’l Inc. Co.*, 308 So.2d 312, 314 (La. App. 3 Cir. 2/12/1975)

Due to the ambiguity within the contract the Court must look to the parties’ intent. *Succession of Fannaly v. Lafayette Insurance Co.*, 01-1144, p. 2 (La. 01/15/02), 805 So.2d 1134, 1137. Under the general rules of contract the Court should not look beyond the four corners of the insurance contract to ascertain the

intent of the parties. *See Ashire v. Vermilion Parish School Board*, 02-2881, p. 5 (La. 6/27/03), 848 So.2d 552, 555 citing *Ortega v. State, Dept. of Transp. ad Dev.*, 689 So.2d 1358 (La. 2/25/97). However if a question remains, the unclear language is construed in favor of the insured. La. C.C. art. 2056 and *Succession of Fannaly*, 01-1144, p. 4, 805 So.2d at 1138. Because the language of the two provisions prevent a clear unambiguous determination of the policy flood limit, La. C. C. article 2056 directs us to find in favor of the insured, thus this Court must interpret the provisions as providing \$10 million of flood coverage. For these reasons I concur in the result reached by the majority.