

Damage Caused By Water-Borne Debris Beyond Flood and Wave Exclusion in Homeowner's Policy

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Washington law has long provided that "[a]n insured may not avoid an exclusion merely by affixing a specific label or characterization to the act or event causing the loss." Thomas V. Harris, *Washington Insurance Law*, § 6.10, fn. 179. That rule was recently put to the test before Seattle Federal District Court Judge Ricardo Martinez in [Johnson v. Allstate Ins. Co.](#), a coverage dispute over a waterfront home damaged during a winter storm. The home was knocked off its foundation by waves crashing against it, and the homeowners alleged that there were logs in the water that caused the damage. Allstate denied coverage, asserting that the loss was not covered because of policy exclusions for "water", "waves" and "weather conditions." The homeowners filed suit seeking coverage, claiming that "water-borne debris is a non-excluded peril."

In a January 10, 2012 order denying Allstate's motion to dismiss, Judge Martinez concluded that the policy's exclusions for "water", "waves" and "weather conditions" do not exclude coverage for logs propelled by waves. Judge Martinez declined to follow *Kish v. Ins. Co. of N. Am.*, 125 Wn.2d 164 (1994), a case in which the Washington Supreme Court held that these exclusions eliminated coverage for similar damage because "flood" and "rain-induced flood" are not distinct perils. Judge Martinez reasoned that Allstate's policy was, at best, ambiguous because it made no mention of destructive material propelled by waves. He also found that an average insurance purchaser would distinguish between waves and destructive material propelled by waves and, to illustrate the point offered what seemed to be a far-fetched analogy to an instance in which waves carry an unexploded World War II mine.

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