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FLORIDA'S BUSINESS LAW FIRM

HURRICANE DAMAGE CAUSED BY FLYING DEBRIS. WHO'S LIABLE?

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The 2018 hurricane season has officially arrived. Damage caused by flying debris is one of the major threats associated with a hurricane. Securing loose items on your property should be part of your standard preparation when a high wind storm is approaching. But what happens when an item becomes a flying projectile during a storm causing damage to yours or someone else's property? Who is liable? The answer is – it depends.

Putting insurance coverage issues aside, whether a landowner could be liable for damage caused by flying debris from the landowner's property is generally a question of negligence. A landowner owes a duty of reasonable care with respect to the management of its property and must exercise this reasonable care in securing their property when there is an approaching hurricane.

Oftentimes when faced with potential negligence liability for damage caused by flying debris, a landowner may raise what the courts have called the "act of God" defense to avoid liability. Through this defense, the landowner argues that some force of nature has acted (*i.e.*, hurricane force winds), and that this force should relieve the defendant of his liability for damage. In order for this defense relieve a landowner of liability, however, (1) the act of God must be so extraordinary or unusual such that the history of a particular locality gave no reasonable warning of it, (2) the landowner's own negligence did not combine with the act of God in causing the damage, and (3) there was no precaution of the landowner that could have prevented the damage.

At least one court in Florida has stated that "it is within the knowledge of all who have long resided in this area that we are occasionally subjected to winds of hurricane force, and that these winds have a tendency to topple trees, break limbs, and send unsecured objects flying about. These storms are not beyond reasonable anticipation." *Rubin v. Appel*, 194 So. 2d 318, 319 (Fla. 3d DCA 1967). As a result, absent a hurricane of truly extraordinary force, Florida residents may be hard pressed to successfully rely on the act of God defense to avoid negligence liability for damage caused by flying debris. In any case, to protect again liability it is essential that a landowner take all reasonable steps to secure their property to prevent any damage prior to a hurricane.

If you have any questions regarding liability for damage caused by flying projectiles during a hurricane, please contact Nicole Levy Kushner of Berger Singerman's Dispute Resolution Team.

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