Section 627.706, Florida Statutes, has not always required "structural damage" as part of a "sinkhole loss." Until 2005, the statute required "actual physical damage to the property." The 2005 amendment to section 627.706 narrowed the damage requirement to "structural damage to the building" but left "structural damage" undefined. In 2011, the legislature codified five criteria that individually define "structural damage." *See* § 627.706(2)(k), Fla. Stat.

Recently, two Eleventh Circuit opinions put to rest an issue in sinkhole litigation: interpreting the "structural damage" requirement for a "sinkhole loss."

In *Shelton v. Liberty Mutual Fire Insurance Co.*, 578 F. App'x 841 (11th Cir. 2014),[1] the policy issued after the 2011 amendment did not define the phrase "structural damage to the building." Nor did the policy explicitly incorporate the detailed "structural damage" statutory definition. *Id.* at 843. The question for the court, then, was whether the detailed statutory definition applied to the policy's requirement of "structural damage." *Id.* at 845. The court held it did. *Id.*

The court noted the legislature intended for the "structural damage" definition to be "*used in connection with any policy providing coverage ... for sinkhole losses. Id.* (quoting § 627.706(2), Fla. Stat.). Because the policy did not define "structural damage," the statutory definition "must be read into" the policy and given full force and effect as other terms in the policy. *Id.* (quoting *Northbrook Prop. & Cas. Ins. Co. v. R & J Crane Serv., Inc.,* 765 So. 2d 836, 839 (Fla. 4th DCA 2000)).

The court held that the plain meaning of the unambiguous phrase "structural damage to the building" is "damage that impairs the structural integrity of the building."

The Eleventh Circuit later revisited the "structural damage" debate in *Hegel v. First Liberty Insurance Corp.,* 778 F.3d 1214, (11th Cir. 2015).[2] The pre-2011 policy in *Hegel* also contained a "structural damage to the building" requirement for a "sinkhole loss" and did not define "structural damage." *Id.* at 1216. But unlike *Shelton*, the 2005 amendment governed the policy, and as a result, both the policy and the statute required "structural damage to the building" for a sinkhole loss without any definition of what constituted "structural damage." *Id.*

Rejecting the argument that any damage (however cosmetic) to the structure qualified, the court held that the plain meaning of the unambiguous phrase "structural damage to the building" is "damage that impairs the structural integrity of the building." *Id.* at 1222 (adopting *Gonzalez v. Liberty Mut. Fire Ins. Co.,* 981 F. Supp. 2d 1219 (M.D. Fla. 2013)). Distinguishing the use of the adjective "structural" from the noun "structure," "structural" is a "necessary" element of the building, not a mere cosmetic element. *Id.* at 1221.

The broader aspect of the *Hegel* case is the court's guidance on interpretation of contracts, especially with respect to plain meaning. For sinkhole coverage disputes involving Florida property insurance policies, *Shelton* and *Hegel* resolve these debates for the undefined use of "structural damage."

[1] Disclosure: Butler Pappas Weihmuller Katz Craig LLP represented the insurer.

[2] Butler Pappas also represented the insurer in *Hegel*.

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