



## How To Make Rain Disappear

May, 2013

As I tried to avoid another puddle this morning on my walk to the office I wondered whether I was stepping over rain water or surface water. Later, as I sat in my office with the space heater drying my socks and pants, I read the new *Rizzo v. State Farm Ins. Co.* case from the Idaho Supreme Court, and I realized I had been soaked by surface water. Strangely, that did not make me feel any more comfortable. But it did help me better understand coverage—in the insurance, not rain gear sense of the word.

The *Rizzo* case involves water loss claims made under a homeowner's insurance policy. The insured argued that his home was damaged by rainwater that entered his basement through holes in the foundation caused by severe winds. The insurance company argued that the damage was caused by surface water, which had seeped into the home from a window well, and should be excluded by the policy's exclusion for damage caused by "surface water." The trial court agreed with the insurer and granted its motion for summary judgment.

On appeal, the Idaho Supreme Court distinguished between surface water and rain as follows:

Surface water is water diffused over the surface of the land. Any water on the earth's surface, including water from rising groundwater, may be surface water unless or until it forms some more definite body of water. Typically, surface water is created by rain or other precipitation. However, though it is derived from rain, surface water is distinguished from rain by its character as water on the ground. Rain, on the other hand, has been defined as 'water falling from the sky.'

Using these definitions, it is likely that Idaho courts will conclude that damage from water flowing on the earth onto the insured's property, or into the insured's building, will generally constitute damage from surface water. Damage from water naturally falling from the sky onto the insured's property, or into the insured's building, will generally constitute damage from rain.

The *Rizzo v. State Farm Ins. Co.*, 2013 WL 2232287 (Idaho May 22, 2013), case can be found [here](#).