Fulton County Daily Report
Vol. 7, No. 19
Copyright 2006 by American Lawyer Media, ALM, LLC

July 19, 2006

JUDGES PLAY **KATRINA** SUITS DOWN MIDDLE

NEWS

By PETER GEIER, The National Law Journal

THE FIRST BATCH of opinions issued in **Katrina**-related **insurance** litigation shows that judges are following precedent by affirming flood exclusions in homeowners' policies, but also are allowing policyholders their day in court to determine whether wind or water caused their losses.

Counsel for several insurers have welcomed the courts' rejection of what some consider creative attempts to win coverage for excluded water damage. Plaintiffs' lawyers are pleased that the courts are giving them and their experts the chance to prove to a jury what caused their clients' losses.

U.S. District Judge L.T. Senter Jr. of Gulfport, Miss., has ruled that a judge or jury must determine the extent to which wind or water caused damage, and that clearly expressed water-damage exclusions are enforceable. He also noted that ambiguous exclusions in some homeowners' policies could make them unenforceable. Tuepker v. State Farm Fire & Casualty Co. , No. 05cv559, and Buente v. Allstate Property & Casualty **Insurance** Co. , No. 05cv712 (S.D. Miss.).

'Judge Senter gave homeowners the chance to prove that wind destroyed the premises before the flood got there, which was a big win for homeowners. But he also maintained the integrity of the insurers' flood exclusion,' said Randy J. Maniloff, a partner in the business **insurance** practice group at Philadelphia's White and Williams who has written about this litigation but is not involved in it.

'These issues are the meat of appellate decisions relating to cases arising from other hurricanes,' Maniloff added.

Chief U.S. District Judge Richard T. Haik Sr. of Lafayette, La., ruled that Louisiana's valued-policy law--which provides full policy benefits when a covered risk causes a total loss--cannot apply when a covered risk only contributes to a total loss. Turk v. Louisiana Citizens Property **Insurance** Corp. , No. 06cv144 (W.D. La.).

A theory rejected

Haik's opinion is the first to decide--and reject--a plaintiffs' theory in a number of class actions based on the valued-policy law. Haik ruled that the theory misinterpreted the law, but certified the question for appeal to the 5th U.S. Circuit Court of Appeals.

Andrea S. Lestelle of Lestelle & Lestelle in Metairie, La., who represents

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.

plaintiffs in several **Katrina insurance**-coverage class actions, said that there have been 'very good decisions for the plaintiffs at this point.'

Senter's finding that some flood-exclusion provisions could be ambiguous--thus unenforceable--is helpful to the plaintiffs, Lestelle said, noting that 'ambiguities are a big deal because they are read in favor of the insureds.'

'They're not just ambiguities; they're contradictions. They exclude flood coverage and charge you for a hurricane deductible. There's a lot of contradiction here, I think,' Lestelle said. 'Why do you put in a hurricane deductible unless you're paying for hurricane damage?'

In another **Katrina**-related development, U.S. District Judge Eldon E. Fallon of New Orleans declined to rule whether a federal court has jurisdiction over certain state tort claims arising from the National Flood **Insurance** Program (NFIP), and remanded that case to state court. Landry v. State Farm Fire & Casualty Co. , No. 06cv181 (E.D. La.).

This case is one of a group that stems from claims that agents allegedly misrepresented federally subsidized policy coverage to homeowners.

W. Wayne Drinkwater Jr., a partner in the Jackson, Miss., office of Bradley Arant Rose & White of Birmingham, Ala., who represents State Farm in Mississippi but is not counsel of record in these cases, took issue with Fallon remanding to state court a tort action alleging that homeowners were underinsured because **insurance** agents had misinformed them as to their NFIP coverage.

Private companies write and service federal standard flood **insurance** in their own names through the NFIP, which, administered by the Federal Emergency Management Agency, should come under federal jurisdiction, the defense contends.

Peter Geier writes for The National Law Journal, an affiliate publication of the Daily Report. He can be reached at pgeier@alm.com.

7/19/2006 FULTONDAILY

END OF DOCUMENT

© 2006 Thomson/West. No Claim to Orig. U.S. Govt. Works.