

Insurer Wins First Case In Slew of Katrina Suits

**Nationwide's Victory
Will Likely Cheer Industry
But May Not Set Precedent**

By IAN MCDONALD

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The first decision among hundreds of post-Hurricane Katrina insurance-claim lawsuits came down in favor of the insurer. The decision will likely cast a shadow over coming cases and cheer insurance-company attorneys, but the wide-ranging nature of the various suits could limit the precedent-setting value of the ruling.

In the decision, the first of many "wind vs. water" suits, a Mississippi federal judge found that [Nationwide Mutual Insurance](#) Co. was correct to deny the majority of a claim filed by a Gulf Coast couple.

In these disputes, homeowners allege their claims were underpaid by billions of dollars because their homes were damaged or destroyed by the storm's high winds, which are covered under their insurance policies. Insurers, however, claim the damage was the result of flooding, which isn't covered in most standard homeowner policies. More than 100,000 homes were damaged or destroyed in Hurricane Katrina, which cost insurers about \$41 billion in claims.

Nationwide is one of several insurers named in similar suits, and the industry will likely see yesterday's decision as a weight off its back. "It's a very positive ruling for insurers doing business in the Gulf," said Joseph Annotti, a spokesman for the Property Casualty Insurers Association of America.

In yesterday's ruling, Judge L.T. Senter Jr. found that Nationwide owed Paul and Julie Leonard of Pascagoula, Miss., \$1,228.16 for wind damage to their home. After applying a \$500 deductible, Nationwide originally paid the Leonards \$1,661.17.

However, the couple were seeking more than \$158,000 to cover damage to their home and its contents, plus interest, attorney's fees and expenses. The Leonards' experts estimated that the damage totaled more than \$130,000, with more than \$47,000 attributed to wind, but Judge Senter attributed the damages to water that rose to five feet in the first floor of their home.

"Almost all of the damage to the Leonard residence is attributable to the incursion of water," Judge Senter wrote in his opinion filed in U.S. District Court in Gulfport. As a result, Nationwide was following the "express terms" of the policy, the judge wrote.

Additionally, Judge Senter found that the Leonards' local Nationwide insurance agent didn't mislead the couple in 1999 when he said they didn't need flood insurance, because the agent didn't say the Nationwide policy would cover flood damage.

The Leonards' lawyer, Richard Scruggs, didn't return several calls to his office seeking comment.

In a statement, Nationwide said it was "very pleased" with the ruling, adding that it "underscores just how important it is for all policyholders to carefully read and understand the terms of the coverage they purchase."

The influence of yesterday's decision could be less than expected, however, because the facts of the Leonard case differ from some others. In this case, the plaintiffs' house, more than 500 feet from the water, according to the judge's decision, remained standing after the storm. As a result, there was evidence that could be examined to determine whether wind or water had caused the damage. In many other cases, homes were more or less washed away, leaving only concrete slabs that were the homes' foundations.

"It's a big win for Nationwide in this case, but it doesn't really change the rules for other cases," says Randy Maniloff, an attorney who represents insurers in policy disputes with White and Williams in Philadelphia. "Here you see a judge who recognizes that these cases are going to be decided on their individual facts."

If cases are looked at individually, outcomes will be tough to predict. In "slab" cases, for instance, Mr. Maniloff says variables like eyewitness accounts come into play. Mr. Annotti, the insurance industry spokesman, said the wind-water debate can be a tricky affair when only a slab is left. Investigators might look at the bolts that attached a destroyed house to the slab, for instance. Bent bolts can indicate the house was blown over, while straight bolts can be a sign that a house was washed away, he said.

Write to Ian McDonald at ian.mcdonald@wsj.com